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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 307.

AH HOW alias LOUIE AH HOW, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 9, 1903.

(18958.)

SUPREME COURT OF THE UNITED STATES.

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AH HOW ALIAS LOUIE AH HOW, APPELLANT,

vs.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Ah How, a Chinese and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Ah How, that he may be dealt with according to law

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 *The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies or any or either of them:*

Whereas complaint on oath has been made to me, charging that Ah How was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Ah How wherever he may be found and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence, according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

2½ U. S. commissioner's office, eastern district of New York. The United States of America vs. Ah How. Warrant to apprehend. Bail in $500 taken July 28, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within named Ah How arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

3 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
AH HOW. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Ah How, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Ah How, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

4 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Ah How alias Lou How, by his counsel, claimed to have been born in the United States and to be lawfully entitled and to be and to remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Ah How is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Ah How be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

5 United States district court, eastern district of New York.

UNITED STATES
vs.
AH HOW. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth, in substance, that one Ah How, on

the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Ah How, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the United
6 States and to be lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Ah How was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Ah How, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

7 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Ah How, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceeding before U. S. commissioner. Filed December 29, 1902.

8 UNITED STATES
vs.
AH HOW, ALIAS LOUIE AH HOW.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 15th, 1902.

Appearances: George H. Pettit, esq., United States district att'y, by Mr. Howell; Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant Ah How, alias Louie Ah How, was apprehended on the 23rd day of July, 1902, without a warrant, at the

premises 38 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States
9 Commissioner Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. McMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do; first, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the ground that
10 the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. HOWELL states that the Government's case is in, as per stipulation.

AH HOW, called as a witness on his own behalf, testifies through an interpreter as follows:

Direct examination by Mr. McMANUS:

Q. What is your name?
A. Ah How.
Q. Where were you arrested?
A. Myrtle avenue.
Q. Were you arrested on the 23rd of July?
A. Yes.
Q. What number, Myrtle avenue?
A. 38.
Q. How long have you been in the United States?
A. 20 years.
Q. What business were you engaged—what was your occupation in 1892 and 1893?
A. I was in San Francisco.
Q. When, '92 and '93?
A. Yes.
Q. How long were you in this place in Myrtle avenue?
A. I was not long.
Q. How long?
A. About three years.
11 Q. Three years—and where were you before that?
A. 34 Mott street.
Q. And what business were you engaged in there?

A. Grocery.
Q. And how many years were you engaged in that business?
A. 13 years.
Q. 13 years—always at that same place?
A. Moved to 33 Mott street.
Q. Then you were, from '86 until '99, engaged in business in Mott street, in the city of New York?
A. Yes.
Q. And were you a partner in that concern?
A. Yes, I was a partner.
Q. What business were they engaged in?
A. Grocery.
Q. How much was the value of your interest in that business?
A. $1,000.
Q. How many partners had you?
A. Lee Chung and Tung Koi.
Q. Where were you before that?
A. In a laundry; work in a laundry.
Q. Where?
A. Myrtle avenue.
Q. Where did you go t[illegible]hen you came to the United States first?
A. San Francisco.
12 Q. And what years were you in San Francisco?
A. 8 years of Kuong Suey.
Q. How long were you in San Francisco, then?
A. Five years.
Q. And you left there and came to New York?
A. Yes.
Q. Have you ever been in San Francisco since?
A. No.
Q. What did you mean by the statement that you had been in San Francisco prior to being in Myrtle avenue?
A. Mistake.

Cross-examination by Mr. IZARD:

Q. How old are you?
A. 35.
Q. Where were you born?
A. In China.
Q. Whereabouts in China? What village?
A. Born in China.
Q. What village?
A. Hong Men.
Q. Is your father still living?
A. Yes.
Q. Does he live in that village now?
A. Yes.
Q. Did you go to school in that village before you came to the United States?
A. Never go to school.
Q. How old were you when you left there to come to this country?
A. Fifteen years.

13 Q. And you landed first in San Francisco, is that right?
A. Yes.
Q. Did you have relatives there?
A. My father came with me.
Q. Came with you, and what did you do when you first got to San Francisco in the way of business?
A. I worked at the laundry with my father.
Q. For how many years did you and your father work together in a laundry in San Francisco?
A. Been working four years.
Q. Then what did you do?
A. Then I came to New York.
Q. What did your father do, if you know?
A. He came to New York with me.
Q. And what did your father do when you got to New York, if you remember?
A. Grocery.
Q. Went into business in a Chinese grocery?
A. Yes.
Q. What is your father's name?
A. Louie Shung.
Q. And did he take a thousand dollars' interest in this store, also?
A. Yes.
Q. And you bought a thousand dollars' interest, is that right?
A. No; I didn't have it.
14 Q. You didn't have a thousand dollars, it was your father who had that thousand dollars' interest in the store, was it?
A. Yes.
Q. Then, as a matter of fact, the only interest that your family had in this store was the thousand dollars' interest that your father had?
A. Yes.
Q. And did you work in the store for several years after you came to New York?
A. Yes.
Q. Did your father remain there for several years, also?
A. Yes.
Q. How many years did your father continue to be a partner in that store?
A. About six years.
Q. About six years. Did you work in the store during the whole time that your father was a partner?
A. Yes.
Q. What wages did they pay you?
A. $30 a month.
Q. They paid you that for the whole six years that you worked there, is that right?
A. Yes.
Q. At the end of these six years what did your father do?
A. Go back to China.
Q. And what did you do?
A. Go work in a laundry.

Q. You went to work in a laundry. Then you have been working in laundries ever since?

A. Yes; go to work in a laundry; sometimes I get a laundry for myself.

15 Q. But you have been a laundryman ever since you quit the store when your father left?

A. Yes.

DENNIS O'SULLIVAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. O'Sullivan, do you know this defendant?

A. I do.

Q. And how long have you known him?

A. I have known him two or three years.

Q. When?

A. In 34 Mott street?

Q. When was it, do you know?

A. That is over—about 12 years ago.

Q. And what was the place 34 Mott street?

A. A grocery, Chinese grocery, all kinds.

Q. And what was the name of the firm?

16 A. Kwong Chung Ong.

Q. And how often did you visit there?

A. I was in Mott street for about 23 years; every night after I get through we used to collect in these stores, five or six young men that was always doing business with them there—William Colliton, Mack, and several other men—we used to visit there to carry on the job, just talking and joking.

Q. Then you saw this defendant, you say, about 12 years ago?

A. About twelve.

Q. And you saw him for about three years after that?

A. Yes.

Q. And it was always where?

A. In Mott street.

Q. Was it in this store, 34 Mott street?

A. Not particularly in this store.

Q. What did you see him doing in this store when you were there?

A. Saw him handling goods there same as any of the rest of them.

Q. What do you mean by "handling goods?"

A. Well, he might be selling; I never saw him buying anything because what we call the foreman he used to always buy from me when they wanted any rice; I had a great deal of trouble to get him to buy because I had some words with him.

17 Q. This man would then conduct his business the same as anybody else?

A. Same as anybody employed there or connected with it.

Q. Do you know who the members of the firm were?

A. I knew Kwong. Well, I knew the whole of them, but I don't know their names. I don't think in all the time I was amongst them that I know twenty Chinamen's names yet.

Q. Was this man doing the same business in the place as the other——

A. As other employees.

Q. Do you know whether he was an employer or an employee?

A. I could not state positively.

Q. You don't know what his interest in that business was, do you?

A. I don't, sir. He told me—not exactly me. I heard him telling others several times that he was a partner there, but we can't vouch for that, if they are in a company or not, there are so many companies there and they are all connected with the business.

Q. You have done business with a number of these Chinese companies, have you not?

A. I have.

Q. And in each of them there are always several partners, are there not?

A. So I understand.

Q. In your dealings with them that is the case?

18 A. Yes.

Q. This man's relations with the firm that you did business with at 34 Mott street was the same relation as you witnessed in other places?

A. Yes.

(Objected to, calls for a conclusion.

Objection sustained.)

No cross-examination.

Mr. McManus. I renew my motion for the discharge of the prisoner on the ground that the statute does not prescribe the form or amount of proof as to whether the man was a merchant and not a laborer.

Mr. Howell moves for judgment in this case.

Decision reserved.

19 United States
vs.
Ah How, alias Louie How.

Before B. Lincoln Benedict, esq., United States Commissioner.

Brooklyn, *December 18th, 1902.*

Present: Mr. Howell and Mr. McManus.

The Commissioner orders deportation of prisoner.

Mr. McManus takes exception to ruling and states he will appeal.

20 United States district court, eastern district of New York.

United States
vs.
Ah How, alias Louie Ah How.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for

the said district, by which it was adjudged that the said defendant Ah How, alias Louis Ah How, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York for the reason specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the
21 said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNCE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

22 United States district court, eastern district of New York.

UNITED STATES
vs.
AH HOW, ALIAS LOUIE AH HOW.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action. and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

23 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Ah How, alias Louis Ah How, should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

TERENCE J. McMANUS.

24 Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

25 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
AH HOW, ALIAS LOUIS AH HOW, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York appointed to be held
26 at the city of New York, borough of Brooklyn, on the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Ah How, alias Louie Ah How, is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order & stay. Filed and entered the 29th day of December, 1902.

27 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK ALIAS HOM DOCK, LEE KIT, and Tom Hong alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO ALIAS CHU GEE.

MARCH 18, 1903.

28 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

29 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
AH HOW.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Ah How, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day

30 of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me,

judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Ah How be removed to the country from whence he came, to wit, the Empire
31 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

32 United States district court, eastern district of New York.

UNITED STATES }
vs. }
AH HOW. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, United States commissioner, setting forth in substance that one Ah How on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Ah How, and he was arrested thereon on the 24th day of July, 1902,

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the Chi-
33 nese exclusion act went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Ah How was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China,

And it was thereupon ordered and adjudged by said commissioner that the said Ah How, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards and on the 23rd day of January, A. D. 1903, said

appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

34 Therefore, it is hereby ordered, adjudged, and decreed that the said Ah How be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

35 District court of the United States, eastern district of New York.

UNITED STATES
against
AH HOW ALIAS LOUIE AH HOW.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Att'y.

Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

36 United States Supreme Court.

AH HOW ALIAS LOUIE AH HOW, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Ah How alias Louie Ah How, the appellant herein, applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent

only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed): Appeal. Filed April 20, 1903.

37 United States Supreme Court.

AH HOW, ALIAS LOUIE AH HOW, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for eastern district of New York, confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States and in not holding that the said complaint was not sufficient to confer jurisdiction.

38 Second. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Third. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Fourth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States), by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty

39 obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed April 20, 1903.

40 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Ah How, alias Louie Ah How, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE,
Clerk.
By PERCY G. B. GILKE,
Deputy Clerk.

41 UNITED STATES OF AMERICA, ss:

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Ah How, alias Louie Ah How, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

42 (Indorsement on cover:) File No. 18958. E. New York, D. C. U. S. Term No. 307. Ah How alias Louie Ah How, appellant, vs. The United States. Filed June 2, 1903. File No. 18958.

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8331—03——2

27132

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 308.

CHU DO, ALIAS CHU GEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18959)

27133

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 308.

CHU DO, ALIAS CHU GEE, APPELLANT,

vs.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8906—03——1

1 EASTERN DISTRICT OF NEW YORK:

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector duly appointed under the statutes of the United States; that one Chu Do, a Chinese and a laborer within the United States at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and willfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5th, 1892, as amended by the act of Congress of Nov. 3, 1893, and, having come unlawfully into the United States without certificate, was on the 29th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Chu Do, that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 29th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

2 The President of the United States of America. To the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Chu Do was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer and without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chu Do wherever he may be found and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.]

B. LINCOLN BENEDICT,
United States Commissioner,
For the Eastern District of New York.

3 U. S. commissioner's office, eastern district of New York.

The United States of America, vs. Chu Do, alias Chu Gee. Warrant to apprehend.

The within-named Chu Do arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

The within-named Chu Dow committed for examination. Dated July 24th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

U. S. district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
CHU DO, ALIAS CHU GEE. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector, regularly appointed and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Chu Do, alias Chu
4 Gee, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States and was found unlawfully within the United States without certificate of residence as required by law. Whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do, alias Chu Gee, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing;

And whereas, thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 25th day of November, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the respondent by his attorney claimed to have been born in the United States and to be lawfully entitled to be and remain therein;

Now, after a full hearing thereon, it is on this 25th day of November, 1902, found and adjudged that the said Chu Do, alias Chu Gee, is a Chinese laborer found without certificate of residence as required by law in the United States, was not born in the United States, and is not lawfully entitled to be or remain in the United States; and it is there-
5 upon ordered and adjudged by the said U. S. commissioner that the said Chu Do, alias Chu Gee, be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in said eastern district of New York, this 25th day of November, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES,
vs.
CHU DO, ALIAS CHU GEE.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before me, B. Lincoln Benedict, United States commissioner, setting forth in substance that one Chu Do

on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do and he was arrested thereon on the 24th day of July, 1902.

And afterwards and on the 12th day of August, A. D. 1902, and by continuance to and including the 25th day of November, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the United States and to be lawfully entitled to be or remain therein; and after a full hearing
7 thereon it was found and adjudged by said commissioner that the said Chu Do, alias Chu Gee, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

And it is thereupon ordered and adjudged by said commissioner that the said Chu Do, alias Chu Gee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 25th day of November, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 EASTERN DISTRICT OF NEW YORK:

I, B. L. Benedict, U. S. commissioner, do hereby certify that the foregoing writings are true copies of all original affidavit of complaint, warrant of arrest, judgment, and order of deportation in the case of The United States vs. Chu Do, alias Chu Gee, on file and remaining in my office, made up together with the annexed abstract and proceedings and copy of testimony as a transcript of proceedings in the said case to be transmitted to the district court of the United States for said district, on the appeal of said Chu Do from the judgment of the United States commissioner to the district judge of said district.

Witness my hand and official seal this 11th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

9 *Abstract of proceedings.*

U. S.
vs.
CHU DO.

1902.
July 24th. Defendant arrested and before commissioner.
" Defendant committed in default of bail.
Examination set for August 12th.
Aug. 12. Hearing had. E. W. Woods appears for deft. Hearing continued to Aug. 19th.
Aug. 19. Hearing further continued to Oct. 2nd.

1902.

Oct. 2. Hearing resumed. L. M. Howell, esq., asst. district atty., appears for the U. S. Black, Olcott, Gruber & Bonynge (Mr. T. J. McManus), appear for defendant; witnesses examined on behalf of the U. S. and case continued to 10th. Motion to discharge defendant made.

Oct. 10th. Hearing further continued to Oct. 17th.

Oct. 17th. Briefs on motion to discharge deft. submitted. Decision reserved and hearing continued to Oct. 20th.

Oct. 20th. Motion to discharge denied, and hearing further continued to produce witnesses for deft. from time to time till Nov. 18th.

Nov. 18th. Hearing resumed; defendant's attorney offers to show by an absent witness, who is now sick, that defendant was born in the United States; hearing continued to produce the absent
10 witness until Nov. 21st.

Nov. 21. Hearing resumed; testimony taken on behalf of defendant; testimony closed. Defendant's attorney moves for discharge on the proofs and on all the grounds heretofore urged on motion of Oct. 2. Mr. Howell for U. S. opposes and moves for an order of deportation. Hearing continued to Nov. 25th.

Nov. 25. Hearing resumed; same appearances. Mr. McManus argues in support of his motion and Mr. Howell in opposition thereto. Motion to discharge denied. Judgment given against the defendant. Order of deportation issued to the marshal. Notice of appeal given on behalf of the defendant.

(Endorsed:) Transcript of proceedings for deportation before U. S. commissioner. Made upon appeal to district judge. Filed December 3, 1902.

11 United States commissioner's court, eastern district of New York.

UNITED STATES OF AMERICA)
vs.
CHU DOW, ALIAS CHU GEE.)

Hearing had in the above-entitled case before Hon. B. L. Benedict, United States commissioner, at the court-house in Brooklyn, New York, on the 2nd day of October, 1902.

Appearances. Lloyd M. Howell, assistant United States attorney, appears for the United States. T. J. McManus appears for the defendant.

COUNSEL FOR THE DEFENDANT. I move to dismiss the complaint upon the ground that it does not charge a violation of the act of 1892 or the act of 1893 in relation to the exclusion of Chinese persons, it being our contention that, in order to bring the defendant within the act, the complaint or information should charge expressly that he was a Chinese laborer within the United States prior to the passage of the act of 1892, and that he did not procure a certificate of residence within six months after the passage of the act of 1893.

(Motion denied.)

J. H. JENKINS, Chinese inspector, sworn as witness for the United States, testified as follows:

12 Direct examination by Mr. HOWELL:

Q. Mr. Jenkins, are you a Chinese inspector in the employ of the United States Government?

A. Yes.

Q. As such official, is it a part of your business to investigate and examine into the right of Chinese persons to be in the United States?

A. Yes.

Q. In the course of your examinations, have you met the defendant, Chu Dow, alias Chu Gee?

A. Yes.

Q. Where did you first see him?

A. I found him in a laundry.

Q. Now start in and tell your story, just what happened. Do you recall the date?

I can tell by looking at my book.

Commissioner BENEDICT. Possibly you can refresh your recollection by looking at your warrant.

Yes, sir.

Q. (Mr. HOWELL.) Do you know when was the date of that warrant? Now look at your complaint. Was that day the first time you saw this man or was it the day previous?

A. Yes; it was the day previous.

Q. What is the date of the warrant?

A. 24th.

Q. That was the date previous to that, was it?

A. Yes.

Q. Then you went where and saw this man?

A. I found him in a laundry at 137½ Duffield street.

Q. Now what did you find Chu Dow doing?

A. To the best of my recollection he was at work ironing.

Q. Did you have any conversation with him?

A. I asked him for his papers.

Q. You had an interpreter with you?

A. Yes.

Q. Did you receive anything whatever from him?

A. No.

Q. What did you do then?

A. I took him along with me.

Q. Where did you bring him?

A. To the court-house, post-office.

Q. Before what officer, if any?

A. Mr. Benedict, United States commissioner.

Direct examination before Mr. MCMANUS:

Q. What words did you use?

A. I asked him for his papers.

Q. And you told the interpreter to say that to him?

A. Yes.

13 Q. You do not understand Chinese, do you?

A. No.

Q. Did you ever know this man before?
A. No.
Q. Did you ever see him in your life before your visit on this day?
A. Not that I know of.
Q. So you simply swore to the complaint in this case because of the fact that you had asked the interpreter to ask him whether he had a certificate or not?
A. He presented no certificate.
Q. What was he doing when you went in?
A. To the best of my recollection he was ironing.
Q. Are you positive on that point?
A. No; I am not positive, but that is to the best of my recollection.
Q. What kind of a place of business was this?
A. It was a laundry.
Q. You don't know whether he has ever been a merchant or not?
A. No, sir.
Q. Well, you simply went out on this particular proceeding, and went in this place as you went in other places?
A. Yes, sir.
Q. Looking around for Chinese who did not have certificates?
A. Yes, sir.
Q. And you asked your interpreter this question to put to this defendant, and then you made the arrest. You don't know of your own knowledge whether this interpreter put the question to the defendant or not, do you?
A. No, sir.
Q. If he had been outside you would not have arrested him, would you?
Mr. HOWELL. Question objected to.
Commissioner BENEDICT. Objection sustained.
Q. Did you go into other places that day?
Mr. HOWELL. Question objected to.
Commissioner BENEDICT. Objection overruled.
Q. Did you?
A. Certainly.
Q. How many others?
A. I could not state positively how many.
Q. Was it 10, 15, or 25?
A. 10, or probably 25.
Q. Were they all laundries?
A. Yes, sir.
Q. And in all of these places did you make arrests?
Mr. HOWELL. Question objected to.
14 Commissioner BENEDICT. Objection sustained.
Q. Nobody told you before you went in there that this man was in the United States before 1892, did they?
A. No, sir.
Q. Or in 1893 or 1894?
A. No, sir.
Q. And you don't know as a matter of fact whether he has been or not?
A. No, sir.

Q. And it was simply the matter of fact that he was in the laundry, and that after you asked your interpreter to ask the defendant if he had the papers, and he failed to produce them, that then you arrested him?
A. Certainly.
Q. Who was the interpreter whom you took with you?
A. Moy Gop Jung.
Q. This man in the room here?
A. Yes.

MOY GOP JUNG, sworn as interpreter:

Q. Are you a Christian?
A. Yes, sir.
Q. Do you believe in the Christian oath?
A. Yes, sir.
Q. What is your belief as to making a false statement under oath in a court?
A. If I make a false statement in court, I shall be punished.
Q. Both here and hereafter?
A. Yes, sir.
Q. Do you regard the oath you take here as binding as an oath which you would take as a Chinaman?
A. Yes, sir.
Q. (Mr. HOWELL.) Are you an interpreter in the employ of the United States Government, stationed with the Chinese inspectors here in Brooklyn?
A. Yes, sir.
Q. Do you remember on the 23rd day of July or thereabouts having gone with Inspector Jenkins to 137½ Duffield street, and having there seen the defendant, Chu Dow?
A. Yes, sir.
Q. Did you put to him any questions that day?
A. I went with the inspector and went into his place, and the inspector asked me to ask him for his certificate, and I asked him where his certificate is, and he said his certificate over Chinatown, and the inspector told me to tell him to get ready to go with him.
Q. Told you to tell him to get ready to go with him?
A. Yes, sir.
Q. What was the defendant doing when you went in this place?
A. He was ironing.
15 Q. What was the nature of this place—was it a store, laundry, or what?
It was a laundry.
Q. Did he produce any certificate there?
A. He did not.
Q. (Mr. MCMANUS.) How long have you been in the employ of the Government?
A. Since last August.
Q. August of this year or last year?
A. This year.
Q. Do you mean this summer, or a year ago?
A. I mean July, 1902.

Q. Were you employed before that by the Government?
A. No.
A. What was your last employment, before employment by the Government?
A. I lived in Washington.
Q. In what position?
A. Laundry.
Q. You had a laundry?
A. Yes, sir.
Q. How long were you in business there?
A. I was in business there 15 years.
Q. 15 years?
A. Yes, sir.
Q. In the laundry business?
A. Yes, sir.
Q. Who had you appointed as interpreter, Mr. Izard?
A. No, sir.
Q. Who?
A. I make application to the Treasury Department.
Q. And you were appointed?
A. Yes, sir.
Q. You have got your own certificate?
A. Yes, sir.
Q. And you were a laborer prior to being an interpreter?
A. Yes, sir.
Q. What day was this that you went into this laundry?
A. I don't remember exactly the day.
Q. How long had you been in the office at the time you went?
A. 2 or three days.
Q. It might have been on the 24th that you went there?
A. I don't remember.
Q. Might it have been on the 25th?
A. I don't remember. It might have been on the 26th.
Q. Now, do you know what part of China this man came from?
A. No, sir.
Q. How many Chinese dialects do you interpret?
A. I interpret 2 or 3 different dialects by sound.
16 Q. Are you familiar with these dialects as well?
A. Not all of them.
Q. What do you mean by sound and don't write them?
A. I know them by sound.
Q. And you don't write them?
A. No.
Q. Are you sure this man understood you when you spoke to him?
A. Yes, sir.
Q. How many places did you go in that day?
A. I don't remember; I just follow the inspector.
Q. There was more than one, was there?
A. Yes.
Q. Do you remember the particular facts in each case?
A. No.

Q. How is it you remember this case so particularly?

A. I simply go with the inspector, and what the inspector told me; I simply interpret what his business is.

Q. Do you remember the facts in every case?

A. No; but I remember going with the inspector.

Q. Did not ask him what his business was, did you?

A. No, sir.

Q. Do you know as a matter of fact whether he was here in 1892?

A. No, sir.

Q. Was he here in 1893?

A. I don't know.

Q. And don't know anything about him?

A. No, sir.

Q. Did you know whether Mr. Jenkins had a warrant for him at that time or not?

A. I don't know.

Q. Did Mr. Jenkins have any paper with him at that time?

A. I don't remember.

Mr. HOWELL. Now, Moy, when you left did you remember what you did in this place? Will you explain to me what you meant by what you did there, in connection with all the other places that you went to?

A. I went in with the inspector.

Mr. MCMANUS. When you first went in did you know whether or not this man could speak English?

A. By inspector's orders I always ask this question. He say he can't talk English.

Mr. HOWELL. Then I object to this conversation with Mr. Jenkins.

(Objection withdrawn.)

17 Then the inspector told me to ask him to show his certificate.

Q. That is what you told the Chinaman? Did he show it?

A. No, sir.

Q. Did he answer your question?

A. He said his certificate over Chinatown, New York—Mott street—and——

Q. And he did not produce any certificate?

Mr. HOWELL. Objection.

Commissioner BENEDICT. Objection overruled.

A. No, sir.

Mr. MCMANUS. I move for the discharge of the defendant upon the grounds that the Government has failed to make out a case. In the first place, I contend that the Government is bound to offer some proof that during the years 1892 and 1893 that this defendant was in the United States and was a Chinese laborer at that time, and that the burden does not shift until after something in the way of proof of those facts is established.

Commissioner BENEDICT. Motion denied.

And there is nothing here to show that during those years this man was a laborer or was within the United States.

Commissioner BENEDICT. Motion denied.

Now I ask for the discharge of the defendant on the further grounds that by the act of 1901 and 1902, and under the provisions of the treaty

between the United States and China of 1894, the statute of 1892 and 1893 was practically to all intents and purposes, in connection with the exclusion of Chinese persons in the United States at that time as laborers, was repealed. Now, the treaty of 1894 provides in article 4 that it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, except the right to become naturalized citizens. Now, we would not contend before your honor that this treaty simply standing by itself would be controlling in a proceeding of this character, but we contend under the provisions of the law of 1902 that the provisions of the treaty as to the rights of Chinese persons in the United States is expressly recognized. It is given statutory sanction, and I will quote from the act of 1892 on that point.

* * * * * * *

The first clause provides that the act of 1888 is reenacted, extended, and continued, so far as the same are not inconsistent with treaty obligations. Now, we contend that under that phrase that Chinese persons in the United States are entitled to the same rights and privileges
18 which citizens of any government or country are awarded and accorded here. Now, the citizens of no other country are brought under the jurisdiction within any such proceeding as this, and it is clear to our mind, and I would like to submit a formal memo. on this point, as being a violation of the Constitution of the United States. In the first place they are denied the protection of the laws, and in the second place they are deprived—

(At this point it seems you changed the above motions to read as follows, viz:)

First. I ask for the discharge of the defendant, as the Government has failed to make out a case, and that they have failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893, or prior thereto.

Second. Upon the ground that the statute of limitation has run against the proceedings.

Third. Upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by the act of 1902.

Fourth. Upon the ground that the proceeding is illegal, and that it violates the provisions of the United States Constitution in denying to the defendant its protection of the laws and that it is depriving him of his liberty without due process of law.

Fifth. And I beg leave to submit a brief upon those points.

Commissioner BENEDICT. I set Friday, the 10th of October, as date for next hearing.

19 UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal building, Brooklyn, New York, November 11, 1902.

Appearances: United States District Attorney Pettit, by Mr. Howell; Ralph Izard, esq., chinese inspector for the Government. Messrs. Black, Olcott, Gruber & Bonynge, for the prisoner.

Mr. HOWELL. I move the continuation in the case of Chu Do, the case in which the Government has presented its evidence.

Mr. MCMANUS. We had informed the father of Chu Do to be here this morning as a witness. He was in our office yesterday and made an affidavit, and we assumed that he would be here to-day and we are now informed he is sick. He is a pretty old man, and I ask that the matter be adjourned for a few days that we may produce him.

Mr. HOWELL. No objection.

Adjourned to Tuesday, November 18th, at 11 o'clock.

UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Before B. Lincoln Benedict, esq., United States Commissioner.

FEDERAL BUILDING,
Brooklyn, N. Y., November 18th, 1902.

Appearances: Same as before.

An adjournment is asked for by Mr. McManus on the ground that he is unable as yet to produce his witness.

Mr. HOWELL. I object to any further adjournment and ask for an order of deportation.

Mr. MCMANUS. I will offer our affidavit as showing our good faith and the good faith of the defendant in asking for this adjournment, and ask for a further adjournment, and I am willing to agree to any form of interrogatories or anything further that may be suggested to the end that this case be disposed of peremptorily.

(Objected to on behalf of the Government.)

Mr. MCMANUS. I ask the commissioner to grant us a delay of two days in the case of Chu Do for the reasons stated, and I will, if the commissioner desires it, submit the affidavit I have here.

Mr. HOWELL. I object to the admission of the affidavit as incompetent.

Mr. MCMANUS. I only offer it for the information of the commissioner, not as evidence in the case.

(The affidavit is presented to the commissioner.)

Mr. HOWELL. I renew my motion for an order of deportation in this case.

Mr. MCMANUS. I ask for two days adjournment for the reasons stated and I ask to submit as part of my motion for the adjournment the affidavit I have submitted to the commissioner.

Mr. HOWELL. I object to that.

The commissioner rules that the hearing in the case of Chu Do will be adjourned to Friday, November 21st, at 11 a. m., to proceed peremptorily on that date.

23 UNITED STATES
against
CHU DO, ALIAS CHU GEE.

Before B. Lincoln Benedict, esq., United States Commissioner.

BROOKLYN, *November 21st, 1902.*

Appearances: United States District Attorney Pettit, by Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government. Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, Judge Brenner, associate counsel for the prisoner.

CHU KAI TUN, called as a witness on behalf of the defendant, being duly sworn, testifies (through an interpreter) as follows:

24 Direct examination by Mr. MCMANUS:

Q. What is your business?
A. Chinese grocery.
Q. And where is your place of business?
A. No. 4 Pell street.
Q. How long have you been in business there?
A. Five years.
Q. Are you related to the defendant, Chu Do, alias Chu Gee?
A. That's my nephew.
Q. And do you know where he was born?
A. In San Francisco.
Q. Where, if you know?
A. 947 Sacramento street, San Francisco.
Q. And do you know about when he was born there?
A. Second year of Quong Suey.
Q. What year is that?
A. 26 years ago.
Q. 26 years ago?
A. Yes.
Q. Were you living in San Francisco at that time?
A. Yes, sir.
Q. Did you see him there as an infant?
A. Yes, sir; I did.

Cross-examination by Mr. IZARD:

25 Q. How long have you been a member of this grocery firm at No. 4 Pell street?
A. About six years.
Q. What is the name of that firm?
A. Hom Lum Chun.
Q. Who are the other members of that firm besides yourself, if you know?
A. Six members.
Q. What are their names?
A. Chu Koung, Chew You, Chew Kuon, Jung Bow.
Q. What did you do before you became a member of that mercantile firm?
The WITNESS. One more member, Fong Wing.
Q. (Repeated).
A. In some business in San Francisco.

Q. What was the name of the firm that you were connected with in San Francisco?
A. Dock Teung.
Q. And where was that firm located?
A. 947 Sacramento street.
Q. And how long were you engaged in business there?
A. Seven years.
Q. Seven years—and what were you doing before you were in business at 947 Sacramento street?
A. The first time I came over I was in Dock Teung's business.
Q. What were you doing before you went into business with Dock Teung?
26 A. When I first came I go in that business.
Q. And how long were you in business at Dock Teung's?
A. Seven years.
Q. And after that you came to New York?
A. Yes, sir.
Q. So the only two places you have lived in the United States are San Francisco and New York; is that right?
A. Yes, sir.
Q. And you lived seven years in San Francisco?
A. Yes, sir.
Q. And five years in New York?
A. Yes, sir.

Redirect examination by Mr. McMANUS:

Q. What year was it you came to the United States first?
A. Eleven years after Hung Chee.
Q. When was that—what year of our year?
A. 30 years ago.
Q. And where did you go then?
A. I came to United States and I went back to China.
Q. When did you come to the United States—when did you return to the United States?
A. 18th year of Kwong Suey.
Q. About ten years ago. And did you see this boy before you had gone back to China?
A. Yes, sir.
27 Q. And did you see him, as you testified in your direct examination, in San Francisco at that time?
A. Yes, sir.
Q. Where were you in San Francisco prior to your going to China?
(Objected to, as it has not been testified that he was in San Francisco. Objection overruled.)
A. In a store; Dock Teung.
Q. What is the name of that store again?
A. Dock Teung.
Q. Is that the same firm you afterwards came back to?
A. I went to the country after my return from China.
The COMMISSIONER. Was that the firm, Dock Teung, that he was in before he went back to China, the same Teung that he came back to after he came from China?

Mr. McManus moves to strike out the answer.

Q. (Repeated.)

(Question withdrawn.)

Q. Is this firm, Dock Teung, with which you were associated before you went to China, the same firm that you became associated with after you returned from China?

A. After I came back from China I just stopped there, but I went to the country.

28 Q. But was it the same firm that you afterwards became associated with, after you returned from the country?

(Objected to as leading. Objection overruled.)

Q. Where did you go after you came back *from the country*?

(No answer.)

Q. What part of the country did you go to when you came back to the United States?

A. Oppelet, about 24 miles from San Francisco.

Q. But did you ever return to San Francisco?

A. No; I was in a farm.

Q. Did you come back to San Francisco?

A. Yes; I did.

Q. When?

A. 14th year of Kwong Suey.

Recross-examination by Mr. HOWELL:

Q. Where were you born?

A. China.

Q. How long ago?

A. 55 years ago.

Q. How old were you when you came to this country first?

A. 25 years old.

Q. You were 25 years old; you said you were 55.

A. Yes, sir.

Q. Where did you land in this country?

29 A. San Francisco.

Q. Where did you go when you came to San Francisco?

A. Dock Teung's.

Q. How long were you on that farm outside of San Francisco, at Oppelet?

A. Three years.

Q. Three years; now, was that—then did you go back to San Francisco after you were on that farm?

A. No.

Q. Well, after you left that farm, where did you go to work?

A. Go to the farm picking hops.

The COMMISSIONER. After the farm.

Q. (By Mr. IZARD.) After you left the farm, where did you go?

A. About a mile from the farm, picking hops.

Q. Well, how long were you in that place picking hops?

A. Two years.

Q. Where did you go after that?

A. I came out to place called Oppelet, 24 miles.

Mr. McMANUS objects to the interpreter, as he speaks a different dialect from the witness.

Mr. IZARD. There is no difficulty on the part of the interpreter.

Mr. McMANUS. The interpreter is mixed; but I merely offer it as a suggestion.

30 Q. I started with you on that farm just outside of San Francisco? You said that you worked there three years; didn't you say that?

A. Yes, sir.

Q. Then you went to a place about a mile from there and worked there two years on a hop farm; didn't you say that?

A. Yes, sir.

The COMMISSIONER. Where did he go then?

Q. Now, where did you go then?

A. Came back to 24 miles place.

Q. Went back to Oppelet; how long did you stay there that time?

A. So long ago I don't remember.

Q. Did you come from there to New York?

A. Yes, sir.

Q. (By Mr. McMANUS.) Was this the occasion of your first or your second trip to the United States that you have testified about?

A. The second time after I returned.

Q. Were you a member of this firm in San Francisco at this time?

(Objected to as leading. Question withdrawn.)

Q. (By Mr. IZARD.) How old is Chu Do, if you know?

A. 27 years old.

31 Q. So, when you testified while I was examining you that for seven years before you came to New York you were connected with this firm of Dock Teung at 947 Sacramento street, you were mistaken, were you?

A. No.

Q. You were not mistaken? Well, didn't you just testify that for seven years before you came to New York you were living out in the country near San Francisco? Didn't you just testify that for seven years before you came to New York you were working out in the country near San Francisco?

A. Yes, sir; stayed there long time before I came to New York.

Q. Didn't you testify that when you came back to San Francisco the second time you stayed a few days in San Francisco and then went immediately out to this place in the country?

A. Yes, sir.

Q. How long were you in China on your return to China after coming to this country the first time?

A. Been so long ago don't remember.

(Objected to as having been answered.)

The COMMISSIONER. He has given when he came back again.

Mr. IZARD. I should like the witness to show this court how he came back the 18th year of Kwong Suey, but went to China about 14th year of Kwong Suey.

32 Mr. McMANUS. The interpreter doesn't interpret correctly.

Q. Now, while you were connected with that firm at 947 Sacramento street, whenever that was, can you tell me the name of any Chinese firm next door to 947 Sacramento street?

A. Been so long ago don't remember.

Q. Can you tell me who was at 945 Sacramento street?

A. Don't remember.

Q. Can you tell me who was at 943 Sacramento street?

A. Li Fuch.

Q. At 943—and what business was that Li Fuch in?

A. Chinese grocery.

Q. And what was at 947 Sacramento street?

A. Dock Teung.

Q. And what was that?

A. Chinese grocery.

Q. And what kind of a building was this 947—how many stories high?

A. Three story high.

Q. And the first floor was occupied as a store—street floor?

A. Yes, sir.

Q. And what was the second floor used for?

A. Dwelling house.

Q. Who lived on that floor?

A. Don't remember.

33 Q. And what was the third floor used for?

A. Just rooms.

Q. Rooms for people to live in?

A. Yes, sir.

Q. Who lived on the third floor?

A. Don't remember.

Q. Don't remember anybody that lived on the third floor?

A. No.

Q. Don't remember anybody that lived on the second floor?

A. No.

Q. Your memory is not very clear about things that occurred in San Francisco thirty years ago, is it?

A. No.

Q. Do you remember anything of particular importance that happened in San Francisco during the first years that you lived at 947 Sacramento street?

A. Been so long I could not remember.

Mr. McManus. I ask for the discharge of the defendant on the ground that it has been established that he is a native-born citizen of the United States, and also I renew my motion on all the grounds set out

34 at the close of the Government's case. I submit that this is not a case which calls for the testimony of two white witnesses. I ask for the discharge of the defendant on the ground that it has not been established that this defendant is a Chinese laborer, born in China, within the United States in violation of the provisions of the acts of 1892 and 1893 and on all the other grounds set out at the close of the Government's case.

Mr. Howell. In opposition, your honor, I ask for an order of

deportation in the case of Chu Do, alias Chu Gee, upon the grounds that it has been shown that this man was found acting as a laborer in a laundry; that he was without certificate as required by law; that he was asked to produce the same; that the only testimony offered in his behalf is entirely insufficient, under the law, to entitle him to a discharge.

Testimony closed.

Adjourned for argument to Tuesday, November 25th, at 11 o'clock.

35 United States district court, eastern district of New York.

UNITED STATES
vs.
CHU DO, ALIAS CHU GEE.

The above-named defendant, feeling aggrieved by the order made and entered on the 25th day of November, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Chu Do, alias Chu Gee, was not born in the United States, and was a Chinese laborer without certificate of residence and without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that

36 a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 1st, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 3, 1902.

37 United States district court, eastern district of New York.

UNITED STATES
vs.
CHU DO, ALIAS CHU GEE.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein

is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

38 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Chu Do, alias Chu Gee, should be taken for a hearing.

VIII. For other errors appearing the record of said trial.

ABE GRUBER.

Subscribed and sworn to before me this 1st day of December, 1902.

39 ROBT. C. TEN EYCK,
Notary Public, N. Y. Co.

(Endorsed:) Assignment of error. Filed December 3, 1902.

40 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
CHU DO, ALIAS CHU GEE, DEFENDANT.

On this 2nd day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 3rd day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorneys, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to

41 be held at the city of New York, borough of Brooklyn, on the 12th day of December, 1902, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff, and Chu Do,

alias Chu Gee, is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order & stay. Filed, December 3, 1902.

42 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY.	
SAME *vs.* TOM DOCK, ALIAS HOM DOCK, Lee Kit, and Tom Hong, alias Hom Poe.	
SAME *vs.* AH HOW.	March 18, 1903.
SAME *vs.* YUNG LEE.	
SAME *vs.* YUNG BONG.	
SAME *vs.* CHU DO, ALIAS CHU GEE.	

43 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

44 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
CHU DO ALIAS CHU GEE.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Chu Do alias Chu Gee, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 25th day of November, 1902, entered a judgment herein, and
45 having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained;

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 25th day of November, 1902, be, and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Chu Do alias Chu Gee be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order filed and entered 28th day of March, 1903.

46 United States Supreme Court.

CHU DO ALIAS CHU GEE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Chu Do alias Chu Gee, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a super sedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

47 Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

48 United States Supreme Court.

CHU DO ALIAS CHU GEE, APPELLANT,
against
UNITED STATES.

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth and not subject to the provisions of the Chinese exclusion laws, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person.

49 Second. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant was held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of such commissioner and court his right to be and remain in the United States in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas such provision of law is not constitutional as applied to appellant, who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the

50 United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had

been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Articles IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Sixth. In not holding that appellant had established to the satisfaction of the commissioner and judge the fact that he was a citizen of the United States.

51 Seventh. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed April 20, 1903.

52 District court of the United States, eastern district of New York.

UNITED STATES
against
CHU DO, ALIAS CHU GEE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Attorney, Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

53 United States district court, eastern district of New York.

UNITED STATES,
vs.
CHU DO, ALIAS CHU GEE.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Chu Do, alias Chu Gee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Chu Do, alias Chu Gee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 25th day of November, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a native-born citizen of the United States, and after a full hearing thereon it was found and adjudged by said commissioner that the said Chu Do, alias Chu Gee, was not born in the United States, and was without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

54

And it was thereupon ordered and adjudged by said commissioner that the said Chu Do, alias Chu Gee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

55

Therefore, it is hereby ordered, adjudged, and decreed, that the said Chu Do, alias Chu Gee, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States, within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

56 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States, for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of the United States against Chu Do, alias Chu Gee, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk.*
By PERCY G. B. GILKE, *Deputy Clerk.*

57 UNITED STATES OF AMERICA, *ss:*
To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the

date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Chu Do, alias Chu Gee, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18959. E. New York D.C. U. S. Term No. 308. Chu Do, alias Chu Gee, appellant, vs. The United States. Filed June 2d, 1903. Office of Supreme Court of U. S. Received May 28, 1903.

O

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 309.

LEW GUEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 8, 1903.

(18960.)

27147

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 309.

LEW GUEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector duly appointed under the statutes of the United States; that one Lew Guey, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Lew Guey that he may be dealt with according to law.

J. H. JENKINS, *Chinese Inspector.*

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24th, 1902.

2 The President of the United States of America, to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them:

Whereas complaint on oath has been made to me, charging that Lew Guey was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the Borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the Statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Lew Guey wherever he may be found, and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence, according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L.S.] B. LINCOLN BENEDICT,
United States Commissioner,
For the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America vs. Lew Guey.

Warrant to apprehend. Bail in $500 taken July 25, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within named Lew Guey arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
LEW GUEY. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Lew Guey on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Lew Guey, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Lew Guey, by his counsel, claimed to have been born in the United States and to be lawfully entitled to be and remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Lew Guey is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to be or remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Lew Guey be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY. }

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States

commissioner, setting forth in substance that one Lew Guey on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Lew Guey, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been born in the
7 United States and to be lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Lew Guey was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lew Guey, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 *Certificate of United States Commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of the United States vs. Lew Guey, a Chinese person, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal at Brooklyn, in said district, this 23rd day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed December 29, 1902.

9 UNITED STATES OF AMERICA,
District of Vermont:

Before me, Felix W. McGettrick, a commissioner of the circuit court of the United States, within and for said district, complaint was presented by John H. Senter, United States attorney, within and for said district, charging in substance that on or about the 26th day of June, 1897, at Richford in said district, Lew Guey, in violation of section of the Revised Statutes of the United States, did unlawfully come and was in the United States.

And on the 26th day of June, 1897, defendant was brought before me, the said commissioner, at my office in St. Albans, in said district, and upon full hearing on said charge, the said district attorney being present, it was adjudged by me that said Lew Guey had the lawful right to be and remain in the United States, by reason of being a citizen thereof, and he was accordingly discharged.

Given under my hand and seal at St. Albans, in the district of Vermont, this 26th day of June, 1897.

[L. S.] FELIX W. McGETTRICK,
United States Commissioner for District of Vermont.

(Endorsed:) Certificate of U. S. commissioner.

10 UNITED STATES }
agst.
LEW GUEY. }

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, November 11th, 1902.

Appearances: George H. Pettit, esq., United States district att'y. By Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government. Messrs. Black, Olcott, Gruber, and Bonynge for the prisoner.

It is conceded that the defendant, Lew Guey, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 192 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner
11 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant produced a certificate purported to be signed by one Felix W. McGettrick, but despite the production of this certificate the defendant was taken into custody by the Chinese inspector.

Mr. McMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant
12 of his liberty and property without due process of law; fifth, upon the ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

LEW GUEY, called on his own behalf, testifies as follows, through an interpreter who has also been sworn in this case:

Examination by Mr. McMANUS:

Q. What is your name?

A. Lew Guey.

Q. Where do you live?

A. 192 Myrtle avenue.

Q. Are you the person to whom this certificate was issued on the 26th of June, 1897, by Felix W. McGettrick, United States commissioner for the district of Vermont (showing witness paper)?

(Objected to. Objection overruled.)

A. Yes.

Q. Where were you born?

A. San Francisco.

13 Q. When?

A. I don't remember the year.

Q. How old are you?

A. About 20.

Q. What year did you go to China in?

A. I returned to China when I was quite young; I don't remember what year.

Q. Were you in Vermont?

A. Yes.

Q. When were you in Vermont?

A. I lived in Richford in 1897.

Mr. McMANUS. I offer the certificate in evidence.

Mr. HOWELL. We object to this certificate on the ground that it is not properly proved and identified; that it contains upon its face no photograph of this defendant; there is nothing whatever to show that this certificate belongs to this defendant.

Mr. IZARD. And in addition to those objections the Government has made its objections hereto on the ground it is either a certificate or judgment; if it is a certificate, the commissioner has no power to issue any such paper and therefore it is not competent and should not be admitted; if it is a judgment, it is not properly proven for the simple reason that it is neither a certified copy of a judgment nor an exemplified

14 copy, nor is it a complete record of the judgment; the whole judgment roll should be submitted if there is anything here in the shape of a judgment.

Mr. HOWELL. We object to it as incompetent, irrelevant, and immaterial, and upon all the further grounds stated here by Mr. Izard.

(Objection sustained.)

Q. You are the man mentioned in this certificate?

(Objected to, as the certificate is not in evidence.)

Q. (Continued.) This judgment?

Mr. HOWELL. Nor the judgment either.

Q. Were you arraigned before United States Commissioner McGettrick, at Richford, Vermont?

(Objected to as to the form of the question and as calling for a conclusion as well.)

Q. When were you in Richford, Vermont?

A. In June of 1897.

Q. Were you arraigned before a United States commissioner there?

A. Yes; my father was present to identify me.

Q. Did you have a hearing there before the commissioner?

15 (Objected to as calling for a conclusion. Objection overruled.)

A. Yes.

Q. And was that paper delivered to you after the hearing?

A. It was handed to my father, who handed it to me in turn.

Mr. McManus. I offer it for identification.

(Marked "Exhibit No. 1 for ident." of this date.)

Q. Where have you been since?

A. Been in New York.

Q. Where has this paper been since?

A. It was in Myrtle avenue, in Brooklyn.

Q. You have had it in your possession all the time?

A. Yes.

Cross-examination by Mr. Howell:

Q. How old are you now?

A. 20.

Q. Where were you born?

A. San Francisco.

Q. (By Mr. Izard.) Who told you you were born in San Francisco? (Objected to.)

A. My father told me I was born there.

Q. What is your father's name?

A. Lew Wing.

16 Q. Where is he now?

A. Dead.

Q. How long has he been dead?

A. A little over two years.

Q. How old were you when you went back into China from San Francisco?

A. I was quite young at the time; I don't remember.

Q. What village in China did you live in while you were there?

A. Taiark, Upshan district.

Q. How many years did you live in that village?

A. I lived there until I was fifteen years of age, when I returned to the United States.

Q. Did you go to school in the village?

A. Yes.

Q. Was your father living there during the whole time you lived in China?

A. My father was in the United States.

Q. Where did he die, in this country or in China?

A. He returned to China and died there.

Q. Did he return to China before you left or after?

(Objected to as already testified. Objection overruled.)

A. He was in the United States when I arrived here and returned a short time after that.

17 Q. What year was it, Kwong Suey, that you left China to go to the United States the last time?

A. 22nd year.

Q. You are certain about that?
A. Yes.
Q. And what year, Kwong Suey, is this?
A. The 28th.
Q. What time of year did you leave China to come to the United States the last time?
A. About the fourth month.
Q. Where did you land when you came to the United States at that time?
A. Vancouver.
Q. From Vancouver where did you go?
A. I went to Montreal.
Q. How long did you remain in Montreal?
A. About a week.
Q. From there where did you go?
A. I went to Richford with some white people.
Q. Any other Chinese with you?
A. I was alone.
Q. What became of you when you got to Richford?
A. I went to the jail.
Q. At Richford?
A. Yes.
Q. And then were you tried there?
A. Yes.
Q. Then when you were tried at Richford were you discharged and allowed to come on to New York?
A. Yes.
18 Q. You are positive about that?
A. No mistake.
Q. You were not in any other Vermont cities except Richford?
A. No.
Q. Perfectly sure?
A. No mistake.
Mr. GRUBER. Except as he might be passing through.
Q. Before what judge were you tried, if you know?
A. I don't know.
Q. Do you remember what kind of a looking man he was?
(Objected to.)
A. Stoutish face and reddish in color.
Q. Who was your attorney?
A. I don't know what his name was.
Q. Who appeared as a witness for you before the judge?
A. My father.
Q. What is his name?
A. Lew Wing.
Q. Where was he living at that time?
A. He lived in New York City.
Q. Did you testify yourself before the commissioner?
A. No; my father was the only one who testified.
Q. You don't remember anything about San Francisco?
A. No; I don't remember, I lived there.

Q. Do you know, as a matter of fact, whether you were there or not?

A. I was there when I was young, but I haven't been there since.

Q. How do you know you were there when you were young if you have no recollection?

A. My father told me.

Q. Then the only knowledge you have of ever being in the United States before the time that you claim to have been before Mr. McGettrick is what somebody told you?

A. I don't recall my staying in San Francisco, but I remember Richford.

Q. (Repeated.)

A. I didn't have any.

Q. (By Mr. McMANUS.) How old were you when you went back to China?

(Objected to as already testified. Objection sustained.)

Q. Do you remember crossing the water at that time?

(Objected to as leading.)

A. I was young; I don't remember it.

Mr. McMANUS. We now offer the judgment in evidence.

Mr. HOWELL. Objected to on the grounds already stated, as improperly proven and not sufficiently proven in any sense.

(Objection sustained and the paper excluded. Exception.)

Mr. McMANUS. I beg to ask for an adjournment for the purpose of offering further proof to support this paper we have offered in evidence.

Adjourned to Tuesday, November 18th, at 11 a. m.

UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *November 18th, 1902.*

Appearances: Same as before.

Mr. McMANUS. In this case, if the court please, I asked for an adjournment on last Tuesday in order to procure a certified copy of the judgment roll from the United States commissioner at St. Albans, Vermont. Tuesday evening we wrote to St. Albans, Vermont, and also to Richford, Vermont. A copy of the letter was sent to each place stating the facts and requesting that a certified copy of the judgment roll be sent to us. Up to the time I left my office this morning no answer had been received. We propose to send a registered letter addressed to Mr. McGettrick, and I ask for an adjournment for a week for the purpose of enabling us to make further efforts to get this judgment roll.

Mr. IZARD. We would like to have the same stipulation about the case being closed at that hearing, and if any other evidence is offered it must be offered on that day.

No objection by Mr. McManus.

Adjourned peremptorily to Monday, December 1st, at 11.

Adjourned from December 1st, 1902, to December 5th, at 11 o'clock.

23 UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 5th, 1902.*

Appearances: Same as before.

Mr. MCMANUS. I offer in evidence a letter that we have received from Commissioner McGettrick in answer to a letter we, as counsel for Lew Guey, wrote to McGettrick. The letter is signed by Mr. McGettrick, and I offer it as explaining this certificate and the purpose for which it was given.

Mr. HOWELL. I object to the admission of that letter in evidence upon the grounds that it is entirely irrelevant, immaterial, and incompetent, and as in no sense proving the judgment alleged to have been rendered by Mr. McGettrick in this case of Lew Guey.

Mr. MCMANUS. I submit that the letter is competent as tend-
24 ing to explain the purpose for which this certificate is given and showing that it was given, if the certificate is authentic, after a hearing had before the commissioner wherein it was determined by him that this man was a citizen of the United States, and showing further that this proceeding under which he is now held has already been adjudicated and that it is putting this defendant twice in jeopardy, and I renew my offer of the certificate in evidence.

Mr. HOWELL. I object to it upon the same grounds as heretofore stated.

The COMMISSIONER. No question arises as to the genuineness of the certificate, as it is the commissioner's signature?

Mr. MCMANUS. As to that point, I am willing to go upon the stand and testify that I have written to and received a letter from Mr. McGettrick, and I will testify that the signature on that certificate is in his handwriting.

Mr. IZARD. I do not think the counsel is qualified. Your honor has already ruled upon the admission of that certificate.

25 Mr. MCMANUS. I am offering it upon other grounds.

Mr. HOWELL. We object to the admission of the certificate upon all the grounds heretofore stated, the alleged certificate; we also object now to the admission of this letter alleged to be from Commissioner McGettrick in connection with the certificate already offered. If they are excluded under those objections then the authenticity of the signature of McGettrick becomes entirely immaterial in the case.

The COMMISSIONER. The certificate is not objected to because the genuineness of the signature is questioned?

Mr. HOWELL. There is no objection to the genuineness of the signature.

Mr. IZARD. As yet?

Mr. HOWELL. As one of the elements of our objection to that alleged certificate and that letter we do not take into account the question of the genuineness of the alleged signature of McGettrick; that is not one of the elements of our present objection.

26 The COMMISSIONER. I do not see that that calls for any testimony from you, Mr. McManus.

Mr. McMANUS. Then I renew my offer of the certificate and the letter.

(Objected to upon the grounds already stated.)

Mr. HOWELL. This letter does not alter the situation in any degree whatever, because from its very nature intrinsically, it is entirely irrelevant, immaterial, and incompetent.

The COMMISSIONER. I will admit the certificate to prove the fact of a hearing before Mr. McGettrick. It is competent for that purpose.

Mr. IZARD. A hearing on that date?

The COMMISSIONER. Yes.

Mr. McMANUS. I offer the letter from Mr. McGettrick as evidence received by me explaining the certificate.

The COMMISSIONER. What it explains is that he can not give you anything else.

Mr. McMANUS. It explains that he issues such certificates only in cases tried before him. I offer it for the purpose of showing that there was a hearing on that day.

27 (Objected to upon the ground that the certificate is in no way shown to be connected with the defendant here and as such it is entirely immaterial. Certificate admitted as showing a hearing before Commissioner McGettrick on the date named in the case of a man by the name of Lew Guey.)

Mr. McMANUS. I further offer this certificate as a record of a judgment of the United States court by a United States commissioner finding that Lew Guey is a citizen of the United States.

(Objected to. Objection sustained. Exception.)

The hearing on this case is suspended temporarily.

Hearing resumed:

Mr. McMANUS. I move for the discharge of the defendant in the case of Lew Guey upon all the grounds set out in the case of Chu Gee and on the further ground that the Government has failed to sus-

28 tain its contention and on the further ground that it has been established that the defendant is a citizen of the United States and that that contention and that proof has not been controverted by the Government in any way.

(Motion denied. Exception.)

Mr. HOWELL. The Government moves to deport the defendant.

Decision reserved.

Adjourned to December 12th to submit briefs.

29 UNITED STATES
vs.
LEW GUEY.

BROOKLYN, *December 15th, 1902.*

Before B. Lincoln Benedict, esq., United States commissioner.

Present Mr. Howell and Mr. McManus.

Mr. McManus contends that the certificate which was received as evidence of a hearing before United States commissioner and the testimony that this man received the certificate after the hearing, coupled with the fact that he is found now in the United States engaged here in business, sufficiently meets the burden of proof that the law forces on Chinese per-

sons, against that there is nothing but his arrest and the Government has offered no evidence, and therefore moves for his discharge.

Decision reserved.

30 UNITED STATES
vs.
LEW GUEY.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

The commissioner orders deportation of the defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

31 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

The above-named defendant, feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant Lew Guey, was not born in the United States, and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, pro-
32 ceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 29th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway, New York City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1903.

33 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief, alleges that the said order made by the commissioner

herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested
34 by a Chinese inspector without any warrant for his arrest having been issued.

III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Lew Guey should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

ABE GRUBER.

(Endorsed:) Assignment of error. Filed December 29, 1902.
Certificate filed in N. Y. Co.
Subscribed and sworn to before me this 29th day of December, 1902.

H. M. SPENCE,
Notary Public, Kings Co.

35 United States district court, eastern district of New York.

UNITED STATES }
vs.
LEW GUEY. }

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, borough of Brook-
36 lyn, the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern dis-

trict of New York, wherein the United States of America is plaintiff and Lew Guey is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order allowing appeal. Filed and entered the 29th day of December, 1902.

37 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

38 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

39 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
LEW GUEY.

The defendant above named having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese-exclusion acts, and the case against the said defendant, Lew Guey, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the
40 18th day of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States district attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained;

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be, and the same hereby are in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Lew
41 Guey be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

42 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Lew Guey, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lew Guey, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing

in said cause was had before said commissioner, at which hearing
43 the respondent claimed that he was a native-born citizen of the United States, and after a full hearing thereon, it was found and adjudged by said commissioner that the said Lew Guey was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lew Guey, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

44 Therefore it is hereby ordered, adjudged, and decreed that the said Lew Guey be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the Borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

45 District court of the United States, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty.

Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

46 United States Supreme Court.

LEW GUEY, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Lew Guey, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

47 United States Supreme Court.

LEW GUEY, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth and not subject to the provisions of the Chinese exclusion laws, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person.

48 Second. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant was held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of

such commissioner and court his right to be and remain in the United States, in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas such provision of law is not constitutional as applied to appellant, who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that the said commissioner and court had no jurisdiction over the appellant for the reason that the appellant had theretofore been tried before a United States commissioner and
49 his right to be and remain in the United States established to the satisfaction of said United States commissioner.

Fifth. In not holding that a certificate and judgment of a United States commissioner, duly signed and certified by such United States commissioner, was evidence of the fact that the appellant had established to the satisfaction of the said United States commissioner his right to be and remain in the United States.

Sixth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the United States and China, promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons and laborers residing in the United States.

Seventh. In not holding that the said commissioner and said
50 court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Eighth. In not holding that appellant had established to the satisfaction of the said commissioner and court his right to be and remain in the United States.

Ninth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Indorsed:) Assignments of error. Filed April 20, 1903.

51 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Lew Guey, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKES,
Deputy Clerk.

52 UNITED STATES OF AMERICA, ss.

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Lew Guey is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18960, E. New York D. C. U. S. Term No. 309. Lew Guey, appellant, vs. The United States. Filed June 2, 1903. Received office Supreme Court of U. S. May 28, 1903.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 310.

TOM HONG, ALIAS HOM POE, APPELLANT,

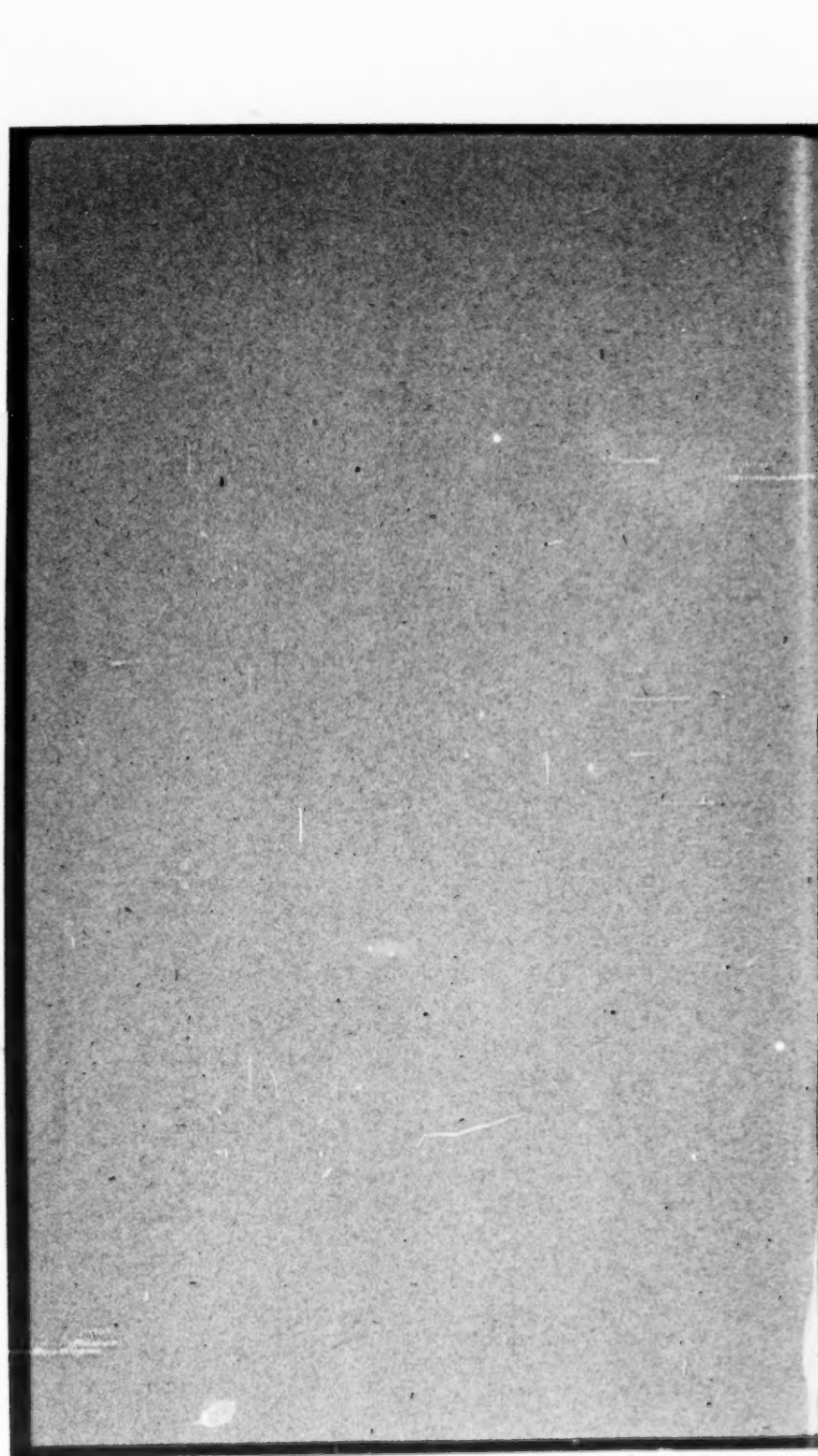
vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18961.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 310.

TOM HONG, ALIAS HOM POE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says that he is a Chinese inspector, duly appointed under the statutes of the United States; that one Tom Hong, a Chinese and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence, required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was, on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Tom Hong that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 27, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me charging that Tom Hong was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Tom Hong wherever he may be found and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner
for the Eastern District of New York.

[Endorsed on cover.]

U. S. commissioner's office, eastern district of New York.

The United States of America vs. Tom Hong.
Warrant to apprehend. Bail in $500 given July 26, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Tom Hong arrested and before the commissioner, dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 26, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
TOM HONG, ALIAS HOM PONG. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector, regularly appointed, and sworn to and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Tom Hong, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Tom Hong, and he was thereupon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

Whereas thereafter and on the 12th day of August, 1902,
5 and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Tom Hong, alias Hom Pong, by his counsel, claimed to have been a merchant doing business in the United States in 1893 and 1894, and therefore lawfully entitled to be and remain in the United States without obtaining a certificate of residence as required by law for a Chicese laborer.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Tom Hong, alias Hom Pong, is a Chinese laborer found without certificate of residence as required by law within the United States, was not a merchant doing business within the meaning of the statutes in 1893 and 1894 in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Tom Hong, alias Hom Pong, be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the
6 eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM HONG, ALIAS HOM PONG.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Tom Hong, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Hong, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been a merchant doing business in the United States on the 3rd day of November, 1893, and
8 lawfully entitled to be and remain therein, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Hong, alias Hom Pong, was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Hong, alias Hom Pong, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner,
Eastern District of New York.

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States *vs.* Tom Hong, alias Hom Pong, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. On appeal. Filed December 29, 1902.

10 UNITED STATES
vs.
TOM HONG, ALIAS HOM POE.

Hearing before United States Commissioner B. Lincoln Benedict, es q. at the Federal Building, Brooklyn, New York, December 5th, 1902.

Appearances: George H. Pettit, esq., United States district att'y, by Mr. Howell, Ralph Izard, esq., Chinese inspector for the Government., Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant, Tom Hong, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 510 Myrtle avenue, Brooklyn, by a Chinese inspector, who found him there working as a laundryman; it is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner Benedict, after
11 having been in the custody of the United States Chinese inspector until the warrant was issued. It is admitted that defendant failed to produce a certificate authorized by the Government upon demand.

Mr. MCMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do—first, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese-exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893 in so far as a proceeding of this character is concerned are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the ground that the evidence, if any, is barred by the
12 statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

(Motion denied.)

Mr. Howell states that the Government's case is in, as per stipulation.

TOM HONG, called as a witness on his own behalf, being duly sworn, testifies, through an interpreter, as follows:

Direct examination by Mr. MCMANUS:

Q. Where do you live?
A. New York.
Q. Where?
A. 17 Dover street.
Q. What are you doing there now?
A. I just room there.
Q. Boarding there?
A. I get a room there and I just go there.
Q. Are you in any business now?
A. No; just working some place.
Q. Where are you working?

A. 510 Myrtle avenue.
Q. You were arrested at the same time this last defendant (Tom Dock) was arrested, and at the same place?
A. Yes.
Q. How old are you?
A. 44 years old.
Q. How long have you been in the United States?
A. About twenty years.
Q. How long have you been in New York?
13 A. Over ten years.
Q. When did you first come to New York?
A. First I came to New York in 10th year of Kuong Suey.
The COMMISSIONER. 1885?
Mr. IZARD. About 1884.
The COMMISSIONER. Between 1884 and 1885?
Q. About 1885?
A. About 18 years ago.
Q. What business were you in, what did you do after you came to New York first?
A. I work, job work and work in a laundry some time.
Q. Where?
A. I worked all along; I change place; I don't remember.
Q. Tell us some place you worked.
A. I remember I did work in Brooklyn a few days.
Q. Did you ever go into business for yourself?
A. Yes; in New York.
Q. When?
A. I went in business in 1891.
Q. And where?
A. Doyer street.
Q. What number Doyer street?
A. 15 Doyer street.
Q. Were you or were you not a member of a firm there?
A. Yes; I member of the firm.
Q. What was the name of the firm?
A. Kwong Yen Ti.
14 Q. Was it the same firm that the last defendant was a member of—Tom Dock?
A. Yes; it was the same firm.
Q. What business were they engaged in?
A. Chinese grocery.
Q. What part of the business did you have charge of?
A. I work all kinds of work in the store and selling goods.
Q. And selling goods; did you buy the goods?
A. No; I don't buy the goods.
Q. Who bought the goods that you used in your business?
A. Kwong Lum is manager of the store; he always bought the goods.
Q. How long were you in business there?
A. Been in the business there five years.
Q. And what did you do after that?
A. After the store closed I go to work in a laundry.

Q. Where?

A. I live in New York and looking for work; anybody ask me to work for them I work for them.

Q. Where did you work after that?

A. Worked in New York on the street where the Jews was.

Q. Where the Jews were—do you know the number; was it down town?

A. 75.

Q. No. 75 where?

15 A. I only worked there a few days; don't remember the street.

Q. Where did you work for any long time?

A. Longer when I worked at 510 Myrtle avenue.

Q. How many years have you been there?

A. Little over a year.

Q. Where were you before that?

A. I can't tell; I go work afterward, but if I don't have any work I stop in New York.

Q. Where did you stop in New York when you weren't working?

A. 17 Doyer street.

Q. 17 Doyer street; and has that been your residence all the time you were out of employment?

A. Yes, sir.

Q. How many years all told has 17 Doyer street been your residence altogether?

A. I did live there about two or three years.

Cross-examination by Mr. IZARD:

Q. Do you generally calculate your dates by the Chinese calendar or the American calendar?

A. Some time I write on the Chinese calendar and some time on the American.

Q. Which are you most accurate in?

(Objected to; calls for a conclusion.)

The COMMISSIONER. It calls for his own knowledge.

16 Q. Which?

A. Why, I can't say; I use Chinese calendars some time and American.

Q. What year of Kuong Suey did you first land in New York?

A. 10th year of Kuong Suey.

The COMMISSIONER. In New York?

Q. Yes; he landed in New York. Have you been in New York ever since?

A. Yes.

Q. Then you have been in New York longer than 10 years, haven't you?

A. Over 10 years.

Q. And when you first came to New York did you go immediately into business at No. 15 Doyer street?

The COMMISSIONER. He said he didn't.

(Objected to as already answered. Objection overruled. Exception.)

A. No immediately.

Q. About how long was it after you arrived in New York before you joined this firm at 15 Doyer street?

A. I said it was a little over a year that I joined the business.

Q. Stopped where about a year before you went into business?

A. I stopped all along with my friend in some laundry.

Q. What laundry?

17 A. I stopped in New York. It has so long time ago, don't remember.

Q. Don't remember the name of the laundry; what is the name of the friend you stopped with?

A. Quan.

Q. You don't remember anything about his family name; is that right?

A. Yes.

Q. And you don't remember where this laundry was that you stopped with him at?

A. I forget it.

Q. And how long did you stay with this firm after you first arrived in New York?

A. About a year.

Q. Then what did you do?

A. I worked in the other place.

Q. What place?

A. New York.

Q. How long did you work in that place after you left this friend you stayed a year with; how long did you work in some other place?

A. About a few months.

Q. Where was that place that you worked?

A. I don't remember.

Q. Do you remember the name of the friend that you worked with there?

A. Hom.

Q. This was a Hom; you don't remember his other name, either?

A. Don't remember.

Q. Just tell me now how long did you stay with him?

18 The COMMISSIONER. Two months.

Q. How long did you work with him?

A. Not very long; about two or three months.

Q. Then where did you go and what did you do?

A. Then I go stop in the laundry with my cousin.

Q. How long did you stop in that laundry with your cousin after leaving your friend Hom?

A. About two months.

Q. Well, after that two months, what did you do?

A. Anybody told me work for them, I work for them.

Q. Well, did you work anywhere?

A. Worked for the Fong Company.

Q. And how long did you work for the Fong Company?

A. About two months.

Q. Two months for the Fong Company; well, go ahead now; what did you next do?

A. I go to business; merchants.

Q. Where did you then go into business as a merchant?

A. 15 Doyer street.

Q. At 15 Doyer street; and what was the name of the firm that you joined?

A. Kwong Yen Hi.

Q. How long had you been in New York, according to the figures you just made here, when you went into business at 15 Doyer
19 street; about how long, approximately; how long after your first arrival in New York was it that you went into business at 15 Doyer street?

A. About few years.

Q. How many—you have just told where you lived all that time—was it one year or two years?

A. I lived in New York seven or eight years before I go to business.

Q. Seven or eight years before you went into business; why did you tell me a minute ago that when you left this Fong Company you went into business?

A. I go to work and go to business.

Q. Went to work and went to business; what do you mean by that?

A. First I go to work, after work then I go to the business.

Q. What does that mean?

A. First I working, and I through my working, all I done, so I go to business.

Q. Didn't you testify that you worked one year with this friend of yours when you first came to New York a minute ago?

A. No; I didn't testify.

Q. You didn't say that you lived one year with this friend of yours when you first came? Didn't you testify that you worked three years in a laundry with a company named Quan?

A. I didn't say it.

20 Q. Didn't you say, then, after leaving the Quan Company that you worked about two months with the company named Hom?

A. Yes; I did say it.

Q. Then, did you say that you worked with the Fong Company?

A. Yes.

Q. Then, didn't you say that when you left this Fong Company you went into business at 15 Doyer street with this mercantile concern?

A. Yes; I said it.

Q. Is that true?

A. Yes.

Q. The 10th year of Kuong Suey is how many years ago from this date?

A. 18 year.

Redirect examination by Mr. McMANUS:

Q. Was it 18 years ago that you came to New York?

A. Yes; about 18 years.

Q. How many years were you in San Francisco before that?

A. Two years.

Q. (By the COMMISSIONER.) What year of Kuong Suey did you go into the firm of Kwong Yen Ti?

A. 20th year of Kuong Suey.

Mr. IZARD. 20th year of Kuong Suey?

Q. (By Mr. MCMANUS.) What year was that—how many years ago from now?

A. 8 year.

21 FRANCIS J. O'BRIEN, called as a witness on behalf of the defendant, duly sworn.

It is stipulated that this witness will testify in this case, as in the case of Tom Dock, that he knew defendant from 1891 to 1895, etc., etc.

Adjourned to Monday, December 8th, at 11 o'clock.

22 UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 8th, 1902.*

Appearances same as before.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, duly sworn.

It is conceded that if the witness, Nathaniel J. Feldman, was called as a witness in this case he would testify to the same state of facts as in the case of Tom Dock.

TOM HONG, recalled.

Redirect examination resumed by Mr. MCMANUS:

Q. Were you arrested at the same time and at the same place that Tom Dock was arrested?

A. Yes, Tom Dock.

23 Mr. McManus moves for the discharge of the defendant upon all the grounds stated in the Chu Do and Lew Guey cases, as well as on the evidence.

Counsel for the Government moves to deport.

Decison reserved.

24 UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. McManus and Mr. Howell.

Mr. McManus presents argument.

Mr. Howell presents argument in opposition.

Mr. McManus moves for discharge of defendant.

Mr. Howell moves to deport.

Decision reserved.

25 UNITED STATES
vs.
TOM HONG, ALIAS HOM POE.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances: Same as before.

The commissioner hands counsel written opinion in this case and orders deportation of defendant.

Mr. McManus takes exception to ruling and states he will appeal.

26 United States district court, eastern district of New York.

UNITED STATES,
vs.
TOM HONG.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Tom Hong, was not born in the United States and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed and that a
27 transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge. Dated New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant,
170 Broadway, Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal filed December 29, 1902.

28 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM HONG.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon

information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant, for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

29 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Tom Hong should be taken for a hearing.

VIII. For other errors appearing the record of said trial.

TERENCE J. MCMANUS.

Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.
Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

30 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
TOM HONG, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at

the city of New York, borough of Brooklyn, on the 15th day
31 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Tom Hong is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered the 29th day of December, 1902.

32 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, LEE KIT, and Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

33 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

34 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United

States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES)
vs.
TON HONG, ALIAS HOM POE.)

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Ton Hong, alias Hom Poe, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant and the said
35 defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained.

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Ton Hong, alias Hom Poe, be removed to the country from whence he came, to wit, the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903

36 United States district court, eastern district of New York.

UNITED STATES)
vs.
TOM HONG, ALIAS HOM POE.)

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Tom Hong, alias Hom Poe, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Hong, alias Hom Poe, and he was arrested thereon on the 24th day of July, 1902.

And afterwards and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the Chinese
37 exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Hong, alias Hom Poe, was not such a merchant and was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Hong, alias Hom Poe, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

38 Therefore it is hereby ordered, adjudged, and decreed that the said Tom Hong, alias Hom Poe, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed): Order of deportation. Filed and entered the 30th day of March, 1903.

39 District court of the United States, eastern district of New York.

UNITED STATES
against
TOM HONG, ALIAS HOM POE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Court,
Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

40 United States Supreme Court.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Tom Hong, alias Hom Poe, the appellant herein, hereby applies for an allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court

(Endorsed:) Appeal. Filed April 20, 1903.

41 United States Supreme Court.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation of B. Lincoln Benedict, United States commissioner, for his assignment of errors, herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the Borough of Manhattan, city of New York, which business was conducted under the name of a firm of which he was a member, and in not holding that the

42 appellant was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the

Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of April 29th, 1902, in conjunction with the treaty between the United States and China promulgated in 1894, required a holding that the provision of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers
43 residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignments of error. Filed, April 20, 1903.

44 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, Justice.

TOM HONG, ALIAS HOM POE, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered, that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

45 In the matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit, in the case of The United States vs. Pin Kwan, requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case which differed from the present one. Admitting the distinction I do not think the United
46 States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kit, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kit, Tom Hong, and Tom Dock, made on the 18th day of Dec., 1902, and remaining on file in my office.

[L. S.] B. LINCOLN BENEDICT,
U. S. Comm.

47 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of the United States against Tom Hong, alias Hom Poe, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKES,
Deputy Clerk.

48 UNITED STATES OF AMERICA, ss:

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the district court of the United States for the eastern district of

New York, wherein Tom Hong, alias Hom Poe, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18961. E. New York, D. C. U. S. Term No. 310. Tom Hong, alias Hom Poe, appellant, vs. the United States. Filed June 2nd, 1903. Received office Supreme Court of U. S. May 28, 1903.

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27168

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 311.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18962.)

27169

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 311.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8904—03——1

1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Tom Dock, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn, in said district, without certificate of residence, as required by law. Wherefore, deponent complains and prays that a warrant of arrest may issue against the said Tom Dock that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed, July 24, 1902.

2 The President of the United States of America. To the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Tom Dock was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence, as required by law, contrary to the statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Tom Dock wherever he may be found, and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence, according to law.

Given under my hand and seal this 24th day of July, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner
for the Eastern District of New York.

3 U. S. commissioner's office, eastern district of New York.
The United States of America vs. Tom Dock.
Warrant to apprehend. Bail in $500 taken July 25th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Tom Dock, arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 25, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
vs.
TOM DOCK ALIAS HOM DOCK. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jeakins, a Chinese inspector, regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Tom Dock on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Tom Dock, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me the said U. S. commissioner, at which hearing the said Tom Dock alias Hom Dock by his counsel claimed to have been a merchant doing business in the United States in 1893 and 1894, and to be lawfully entitled to be and remain in the United States without obtaining certificate of residence as required by law for a Chinese laborer:

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Tom Dock alias Hom Dock was not in 1893 and 1894 a merchant doing business within the meaning of the statutes in such case made and provided, and being a Chinese laborer found without certificate of residence as required by law is unlawfully within the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Tom Dock alias Hom Dock be removed from the United States to the country from which he came, to wit, the Empire of China.

6 Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Tom Dock on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Tom Dock, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and on continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the respondent claimed to have been a merchant

8 doing business in the United States on the 3rd day of November, 1893, and lawfully entitled to be and remain in the United States, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, was not a merchant within the meaning of the statutes in such case provided, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and having no certificate of residence as required by law.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18 day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Tom Dock, alias Hom Dock, to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal at Brooklyn, in said district, this 27 day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed December 29, 1902.

10 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 5th, 1902.

Appearances: George H. Pettit, esq., United States district att'y; by Mr. Howell, Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge; by Mr. McManus, for the prisoner.

It is conceded that the defendant, Tom Dock, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 510 Myrtle avenue, Brookly, by a Chinese inspector, who found him there working as a laudryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrent issued by Uni ed States Commissioner Benedict, after having been in the custody of the United States
11 Chinese inspector until the warrant was issued. It is admitted that defendant failed to produce a certificate authorized by the Government upon demand.

Mr. MCMANUS: We make the same motions for the discharge of the defendant that were made in the case of Chu Do. First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893. Second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893. Third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned are repealed by implication by the act of 1902. Fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law. Fifth, upon the ground that the evidence, if any, is barred by the stat-
12 ute of limitations. Sixth, upon the ground that the arrest was not effected in a manner provided by law.

(Motion denied. Exception.)

Mr. Howell states that the Government's case is in, as per stipulation.

The interpreter, George Moy Way, duly sworn.

TOM DOCK, called as a witness on his own behalf, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. What is your name?
A. Tom Dock.
Q. How old are you?
A. 51 years old.
Q. What is your present occupation?
A. Keep a laundry.
Q. And where is your laundry?
A. 510 Myrtle avenue.
Q. How long have you been in business there?
A. Seven years.

Q. How long have you been in the United States?
A. United States—been in New York 20 years.
Q. Been 20 years in New York?
A. Yes.
Q. What was your occupation—what was your business from the years 1891 to 1895?
A. '82, '83, '84, '86, I kept a laundry down there in Hicks street.

13 Q. Brooklyn?
A. Yes.
Q. For those four years?
A. Four blocks down there.
Q. What did you do after that?
A. Laundry.
Q. What did you do after '86?
A. '86 I sold that store; I go to San Francisco three years.
Q. What were you doing there?
A. I came back 1889.
Q. Came back to New York in 1889?
A. Yes.
Q. What did you do after you came back to New York?
A. I came back to New York 1891; open store.
Q. What kind of store?
A. Chinese groceries.
Q. Were you one of the proprietors?
A. A company.
Q. Were you a member of the company?
A. Yes.
Q. And what was the name of the company?
A. Kwong Yen Ti.
Q. And where was your place of business?
A. Dover street.
Q. What number?
A. 15.
Q. 15 Dover street, in the borough of Manhattan, city of New York?
A. New York, yes.
Q. And how long did you continue in business there?
A. Open that 1891; broke up 1895.

14 Q. From 1891 to 1895. Were you engaged in buying and selling of Chinese groceries and other merchandise at that place during that time?
A. Yes, all the time.
Q. And as a member of that firm or company?
A. Yes.
Q. What did you do after 1895?
A. Work in the laundry.
Q. Where?
A. Myrtle avenue, 510.
Q. From the time that you first came to the United States and to the city of New York 20 years ago, have you ever been out of the United States?
A. No, I have not gone to China, I have never been back to China.

Cross-examination by Mr. IZARD:

Q. How old were you when you left China to come to this country the first time?

A. 19 years old.

Q. So you have been here more than 20 years?

A. 12 years in San Francisco.

Q. And how many years in New York?

A. 20 years.

Q. What did you do in San Francisco while you lived there?

A. Worked for a laundry; some family I worked two years.

Q. You didn't have any mercantile connections in San Francisco?

A. No; I never had.

15 Q. When you came to New York where did you first work?

A. Hicks street—18 Hicks.

Q. How long did you work at 18 Hicks street?

A. Four years.

Q. Where did you go from there—what were you doing at 18 Hicks street?

A. Laundry.

Q. And from 18 Hicks street where did you go?

A. Four years; went back to San Francisco.

Q. After working four years at Hicks street where did you go?

A. Go?

Q. Where did you go?

A. Where did I go? I go to Brooklyn Sunday school.

Q. Where did you go to work?

A. Go back to San Francisco.

Q. Went back to San Francisco—and how long did you stay in San Francisco that time?

A. Three years.

Q. What did you do during those three years in San Francisco?

A. Just working.

Q. What were you doing?

A. Working in Chinese store.

Q. What were you doing?

A. Selling.

Q. Were you a member of a firm at that time in San Francisco?

A. No.

16 Q. You were just hired to work in the store—is that right?

A. Yes.

Q. And how long did you stay in San Francisco then?

The COMMISSIONER. Three years?

A. Three years.

Q. And from San Francisco where did you go, Tom?

A. Came back to New York.

Q. And where did you work in New York when you first came back?

A. Doyer street.

Q. What number on Doyer street did you go to work at?

A. 15 Doyer street.

Q. Did you go immediately to 15 Doyer street when you came back from San Francisco?

A. After a few months I go to Doyer street when I came from San Francisco.

Q. What did you do at No. 15 Doyer street?

A. Bookkeeping.

Q. What was the name of this firm at No. 15 Doyer street what you kept books for?

A. Kwong Yen Ti.

Q. How many partners were there in that firm?

A. Five in all.

Q. Five in all, and what were their names at the time that you joined the firm?

17 A. Quon Lung, Kwong She, Hom Pone, Lee Git, and myself.

Q. Isn't Kwong She a woman's name?

A. No; a gentleman's name.

Q. How long were you a member of that firm, Tom?

A. Five years.

Q. Did your name appear in the firm name outside—the sign?

A. No.

Q. Did your name appear in the partnership articles of the concern?

A. Yes.

Q. Where are those partnership articles now, if you know?

(Objected to as irrelevant and immaterial. Objection overruled. Exception.)

A. The fellow had it who had the key.

Q. Has he got it now?

A. He has gone to San Francisco.

Q. Did he take the articles with him?

A. I don't know what he do, but he take care of that book.

Q. When he left didn't he leave the keys for somebody else to take care of the book?

A. No; he didn't give it to anybody.

Q. Whom did you buy your interest in that concern from—from whom did you buy the interest that you claim to have had in that store at 15 Doyer street?

18 A. We started together.

Q. And what became of your interest when you went out of it?

A. We closed up.

Q. You started in business together and closed up together; is that it?

A. Yes.

Q. What became of the other partners, if you know, after you closed up business?

A. Three in New York, other two went away.

Q. What three are in New York?

A. Hom Pone and Lee Git.

Q. Where are the others?

A. I heard Quon Lung gone to San Francisco, but I don't know the other.

Q. What did you do particularly in the store while you were a member of it?

A. Bookkeeper.

The COMMISSIONER. He said that before.

Q. You didn't do anything but keep the books?
A. No; that's all.
Q. You didn't buy any goods?
A. No.
Q. You didn't sell any goods?
A. Yes; sometime I have to sell.
Q. Whom did you sell to?
A. Sell some laundry; anybody going to buy goods.
19 Q. Do you remember any particular transaction in which you ever sold any goods?
(Objected to as wholly incompetent.)
The COMMISSIONER. Test his recollection.
A. I sell so many goods I don't remember.
Q. You don't remember anybody that you ever sold anything to?
A. No.
Q. Do you remember any laundry firm that you ever had a settlement with for goods bought?
A. I don't remember.
Q. Do you remember the name of any other concern that you ever sold anything to?
A. I sell retail; I forget all about it.
Q. Whom did you buy goods from—your concern?
The COMMISSIONER. He said he didn't buy.
Q. I ask you whom your firm bought from?
A. From China.
Q. Did you import goods?
A. Yes.
Q. Through what customs brokerage firm did you import?
A. Quon Lung knows it.
Q. I didn't ask you if Quon Lung knows; I ask if you know it.
A. I never went to customs house; don't know.
20 Q. You don't remember what customs firm your firm imported goods through?
A. I don't remember.
Q. Were there any entries on your books for custom duties paid?
A. I just put each on the book, but I don't remember; it was too many.
Q. So many customs brokerage firms that you did business through?
The COMMISSIONER. No, no; so many entries.
Q. Did you have different customs brokers through whom you did business?
A. I don't remember.
Q. You don't know whether you had any custom broker at all?
Mr. MCMANUS. He didn't say that.
The INTERPRETER. He said Quon Lung.
Mr. MCMANUS. Give us the answer he gave in full.
A. I don't remember, but only Quon Lung knows it.
Q. Only Quon Lung knows it?
(Motion to strike out all after "I don't remember" as not being responsive.)
Mr. MCMANUS. I object, as the whole answer is competent.
(Objection overruled. Exception.)

21 Mr. McMANUS. I am informed that the interpreter asked him about custom "officer" and not about custom "broker."

Mr. IZARD. I object to that going on the records.

Mr. McMANUS. I ask that the question be repeated, and that the word custom-house "broker" be put.

Mr. IZARD. We object to that comment going on the record.

The COMMISSIONER. Did you ask him customs "officer" or customs "broker?"

The INTERPRETER. I asked him custom-house and broker, if he know any broker.

Redirect examination by Mr. McMANUS:

Q. You were selling goods in San Francisco before you came to New York the last time; is that what you have testified to?

The COMMISSIONER. I think it was.

A. Yes.

Q. Who had charge of the business with custom-house brokers of your firm?

The COMMISSIONER. Here or in San Francisco?

Q. Here in New York, from 1891 to 1895?

A. Quon Lung.

22 Q. Was he one of the members of the firm?

A. Yes; my partner.

Q. Did he do all the business with the custom-house brokers?

A. Yes; he did that.

Recross-examinnation by Mr. IZARD.

Q. When you were selling in the store in San Francisco, you were not a member of the firm?

A. No.

Q. You were hired there as a clerk in that store?

A. Yes.

23 FRANCIS J. O'BRIEN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McMANUS:

Q. Mr. O'Brien, where do you reside?

A. 63 Duffield street.

Q. Duffield street, where?

A. In Brooklyn.

Q. And what is your business?

A. Trucking.

Q. And how long have you been engaged in the business of trucking?

A. 22 years.

Q. And where is your place of business?

A. 21 Pell street.

Q. And what kind of an express business are you engaged in there?

A. All kinds of express business.

Q. Are you engaged in doing business for Chinamen there in that vicinity?

A. Yes, sir; all kinds of Chinese goods I ship.

Q. And how many years have you been engaged in doing business for Chinamen?
A. 18 or 19 years.
Q. Do you know this defendant, Tom Dock?
A. Yes, sir.
Q. How long have you known him?
A. About ten or eleven years.
24 Q. What was his occupation, if you know, from the year 1891 to 1895?
A. Grocery—Chinese grocery.
Q. Where?
A. In 15 Doyer street.
Q. Did you visit that place?
A. Yes, sir.
Q. Did you see him there?
A. Yes, sir.
Q. How often did you go to that place?
A. Sometimes every day.
Q. What were his duties when you were there?
A. I saw him keeping books, and selling goods once in a while.
Q. Was he a member of the firm?
A. I was told so.
Q. What business was the firm engaged in?
A. Chinese groceries.
Q. Did you do express business for that firm?
A. Yes, sir.
Q. What was the name of the firm?
A. Kwong Yen Ti.
Q. Did he pay you money there?
A. Yes, sir.
Q. How often?
(Objected to.)
A. Yes; and if he wasn't there some of the other members paid me.
Q. (By Mr. IZARD.) He usually paid you?
A. Yes.
Q. (By Mr. MCMANUS.) You said if he wasn't there the other
25 members paid you?
A. In all these Chinese groceries you don't get paid by the same man all the time.
Q. What goods would you deliver them?
A. Sometimes I take them some trunks there, and sometimes other stuff.
Q. What kind of stuff?
A. Chinese groceries.
Q. Now, how long did he remain there to your knowledge?
A. To my knowledge I guess about three or four years.
Q. From '91 to when?
A. About '94 or '95.

Cross-examination by Mr. IZARD:

Q. You are positive about your identification of this man, Mr. O'Brien, are you?

A. Yes, sir.
Q. Seen him frequently since 1894 or '5?
A. Yes, sir; seen him a great many times since that time in Chinatown, buying goods over there.
Q. Always know him when you see him?
A. Yes, sir.
Q. You have been pretty intimate with Chinese for a good many years?
A. Yes, sir; 19 years.
Q. Seen a great many Chinese merchants?
A. Sometimes.
(Objected to.)
Q. Seen a great many, haven't you?
A. I couldn't remember.
26 Q. Have you seen as many as a hundred?
(Objected to. Objection overruled. Exception.)
Q. Who told you about the arrest of Tom Dock?
A. Who told me?
Q. Yes.
A. It is common talk around Chinatown about the Chinamen getting arrested.
Q. Who asked you to come and testify for Tom?
A. Himself.
Q. When?
A. Some time ago; a month ago.
Q. You haven't been here before to testify in this case?
A. No, sir.
Q. Hasn't it been set for trial several times before now?
A. Yes, sir; I have been here one day this week.
Q. That was the first time?
A. Yes, sir.
Q. He told you about a month ago; well, it has been set for trial two or three times within the last month.
A. I can't come over every day; I was late to-day; I can't come over every time they want me to come; I promised the man I would come to testify for him.
Q. Now, you testified that you did the trucking for this firm at No. 15 Doyer street for how many years?
A. Three or four years.
27 Q. Three or four years; you are not positive whether it was three or four years?
A. No, sir.
Q. Are you positive that it was as much as four years?
A. Well, I guess it must have been pretty near.
Q. Are you willing to swear that you did any trucking for them for a period of four years?
A. Well, I have sworn already.
Q. I want you to swear over again; just answer the question.
A. Three or four years; yes, sir.
Q. I didn't ask that. Are you willing to swear that you did trucking for four years for this firm at 15 Doyer street?
A. Well, I don't know.

Q. Are you willing to swear that you did trucking for Kwong Yen Ti for two years?

A. Yes, sir.

Q. What two years are you willing to swear that you did trucking for them?

A. I am telling you that I done the work between '91 and '95.

Q. What two years will you swear you did their trucking within those dates?

A. I have been doing the work—I can't tell you—I do their work all the time.

Q. You can answer my question.

Mr. McMANUS. He has answered it.

28 Q. I want to know what two years you are willing to swear that you were in the habit of going there and doing trucking there for that firm?

A. Between '91 and '92.

Q. And that covers the two years that you are absolutely certain about?

A. Yes.

Q. Now, you are sure that during the year 1891 and during the year 1892 or part of the year 1891 and the whole of the year 1892 and part of the year 1893 you did trucking for this concern?

A. Yes, sir.

Q. And you are not willing to swear that you did trucking for them at any other fixed period?

A. Yes; I am—I am not certain about 1895.

Q. What are you willing to swear about?

A. I will swear from 1891 to 1894.

Q. To what time in 1894?

A. Well, I couldn't tell you; I was trucking 1895, too.

Q. Up to what time in 1894 are you prepared to swear you did trucking for this firm?

A. I have got no books to tell me what time.

Q. (By Mr. McMANUS.) Give your best recollection, Mr. O'Brien, up to what time in 1894 did you do trucking for this firm?

A. It was up to August, 1894.

29 Q. (By Mr. IZARD.) From 1891 to August, 1894?

A. Yes, sir.

Q. Then you can swear now to a little longer time than you could a minute ago when you were only certain about these two years?

The COMMISSIONER. He didn't say it was only two years.

Q. What trucking did you do for them, Mr. O'Brien—trunks?

A. Trunks and different Chinese groceries.

Q. Now, for instance, where did you take the trunks to them from?

A. Sometimes I take them to laundries, sometimes take them to the railroad station.

Q. Was it a kind of receiving place for Chinese goods that were going to be distributed among the Chinamen?

A. They stayed in the store maybe for a week or two.

Q. And then went to the laundries?

A. The Chinese stopped in the store with their friends; they might stay there for a month or two.

Q. Well, what else did you truck for them?
A. Truck some Chinese laundry stuff on Mott street and some other laundry.
Q. Well, did you—what goods did you ever haul for them?
30 A. Such as starch and groceries, different groceries.
Q. Where from?
A. From the store.
Q. You never—all you got was from the store?
A. From that store; yes.
Q. Never delivered anything to the store?
A. Sometimes; yes.
Q. What?
A. Different stuff from other different stores.
Q. What interest did Tom Dock have in this store?
A. I couldn't tell you.
Q. Don't know anything about that?
A. I was only told that he was one of the partners.
Q. You don't know whether he had a dollar's worth of interest or not?
A. I don't know whether he had that or $500.
Q. Just answer my question, Mr. O'Brien; don't keep on talking; you don't know whether he had one dollar or a thousand dollars invested in that store?
A. No.
Q. You don't, as a matter of fact, know what the interest in the case of any one of the people in the store was?
A. No, sir.
31 Q. You never saw any partnership articles or articles of agreement incorporating that firm?
A. No, sir.
Q. Did you ever sell any goods to this firm?
A. Sell any goods?
Q. Yes.
A. No, sir.
Q. Never, anything?
A. No, sir.
Q. Did you ever see anybody else make sales of goods to them?
A. I couldn't tell you.
Q. You can tell me whether you have seen it or not, can't you?
A. No; I have never seen it.
Q. You have never seen anybody make any sales to this firm?
A. No, sir.
Q. Did you ever see Tom Dock's name in the sign in front of the store?
A. No, sir.
(Objected to as incompetent and immaterial and not required under the law.)
Q. You never have?
(Objection withdrawn.)
Q. Did you ever buy anything from the firm?
A. No, sir.
Q. So you have no personal knowledge, Mr. O'Brien, of either sales

or purchases by this concern of which this defendant claims to be a member?

32 A. Sales, or purchases; I didn't purchase anything.

Q. You have no personal knowledge of their sales or purchases?

A. No, sir.

Q. Of this firm?

A. None whatever.

Redirect examination by Mr. McMANUS:

Q. You have seen people in there?

A. Yes; but he hasn't asked me that question.

Q. You have seen people there buying?

A. Yes.

Q. And seen them deliver goods to them?

A. Yes, sir.

Q. And seen money paid to them by customers coming in there?

A. Yes, sir.

Q. And money paid by them?

A. Yes, sir.

Q. You have seen this man selling goods to people?

A. Yes, sir.

Q. And did you see him receiving money from them?

A. Yes, sir.

Q. You are not in the habit of having white people with whom you do business show you their copartnership articles?

A. No.

33 Q. They are not in the habit of telling you how much their interest in their firm is?

A. No, sir.

Q. Was there any difference in the way this man did business with you than in the manner in which the business was conducted with white people?

A. No, sir.

Q. Did they pay you for expressage the same as white men would, and conduct business in the same way?

A. Yes, sir.

Recross-examination by Mr. IZARD:

Q. Mr. O'Brien, if you say that the business was conducted in the same way by this firm as that of other firms, when you deliver to other firms and are paid your expressage, do you conclude from that that the party paying you is a member of the firm or a clerk there?

A. Sometimes a clerk in the store or a partner.

Q. You don't necessarily judge from being paid by a man that he is a partner, do you?

A. No, sir.

Q. (By Mr. McMANUS.) This man held himself out as a partner?

A. Yes, sir.

Q. Did he act the same as the other people in charge of the place?

A. Yes.

Adjourned to December 8th at 11 o'clock.

34 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 8th, 1902.*

Appearances: Same as before.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. Feldman, what is your occupation?
A. I am in the real estate business.
Q. And where is your place of business?
A. My place of business is 23½ Division street, with Max J. Forges.
Q. Mr. Feldman, how long have you been in business in the city of New York?
A. I have been in business for the last sixteen or seventeen years.
Q. Have you had charge of any real estate in what is known as Chinatown in the city of New York?
A. I do.
Q. For how many years?
A. I have it to-day; I am collecting rent in Chinatown to-day.
35 Q. Do you know the premises 15 Doyer street?
A. I do, sir.
Q. Have you had charge of those premises?
A. Yes, sir.
Q. Have you charge of them now?
A. Yes, sir.
Q. As agent?
A. As agent.
Q. And you collect the rents for those premises?
A. I do.
Q. How long have you had charge of those premises?
A. Had charge of those premises since 1890; back of that; well, '90 when I had full charge; formerly I used to help in collecting.
Q. Do you know this defendant?
A. I know him.
Q. How long have you known him?
A. Known him for a number of years.
Q. Where did you know him?
A. Known him in our premises, 15 Doyer street.
Q. What was he doing there?
A. He was in business—wholesale grocery.
Q. With whom?
A. A whole lot of them there; five of them.
Q. What was the name of the concern?
36 A. Kwong Yen Ti & Company.
Q. And what part of the premises 15 Doyer street did they occupy?

A. The store itself; now a mission house—the Rescue Band is there.
Q. You still have charge of those same premises?
A. I have, sir.
Q. Did you have charge of those premises from 1891 to 1895?
A. Yes, sir.
Q. Was this defendant there during those years?
A. He was.
Q. And what business did they carry on there?
A. Wholesale groceries.
Q. Was he a member of the firm or company who conducted business there?
A. He was a member.
(Objected to as to form of question.)
The COMMISSIONER. Ask if he knows.
Q. Do you know?
A. I do know.
Q. Was he?
A. Was he what?
Q. A member of the firm who conducted business in those premises?
A. As far as I know him there he was a member of that firm.
Q. What was he doing there?
37 (Objected to as conclusion; counsel asks to have it stricken out. Counsel for defendant asks that it stand.)
Q. Did you go there? How often would you visit those premises?
A. From the 1st of the month up until I got the rent paid.
Q. And how often would you be there during the month as a matter of fact?
A. Just from the case of——
The COMMISSIONER. This place?
A. (Continuing.) This place?
Q. Never mind about the other places.
A. This place, from the 1st of the month I used to go until I collected the rents; sometimes from three to five times I used to go there for the rent.
Q. Whom did you see there when you went?
A. Saw Hom.
Q. Saw this defendant there?
A. Yes, sir.
Q. Was he one of the people whom you talked to?
A. I used to find him at the books writing all the time; figuring.
Q. Did you have conversation with him about the rent at different times?
A. As far as I could make him speak to me. When I came there they knew who I was.
Q. He spoke pretty good English?
38 A. Considerable, as Chinamen can speak.
Q. Have you seen him selling goods there?
A. I did, sir.
Q. Over the counter?
A. Yes, sir.
Q. Was it in the same way as white people would do business?

A. In their Chinese way; selling goods in their own way.
Q. You saw him receive money there?
A. I guess I did.
Q. You know you saw him delivering goods?
A. I seen him lots of time delivering goods and receiving goods; used to see him getting out truck loads of goods—Chinese tea and rice. Most of my time I make my headquarters in that building, because I have separate apartments to collect.
Q. You have charge of the whole building?
A. Yes, sir.
Q. And this firm occupied what part of it?
A. Store and the basement. Now we have separated it and made it into two stores.
Q. You saw him there on the occasion of your visits between the years of '91 and '95?
A. I did, sir.

Q. Have you seen him, since that, around Chinatown?
39 A. Very seldom, I see him but not so often, after they were put out of that store there they disbanded; I didn't see him for some time; once in a while I used to see him come about there; some of his friends got a big Chinee restaurant on the first floor; I used to meet him there.
Q. Will you testify as to whether his conduct in that place when you visited it was the same as the conduct of any white merchant?
(Objected to, objectionable on every ground, irrelevant, immaterial, incompetent, has nothing to do with the issues in this case.)
The COMMISSIONER. We know that they did business in such a different fashion from the American merchant that I question whether your question is really what you want.
(Question withdrawn.)
Q. He was the one of the people you went to for the purpose of collecting the rent?
A. Yes.
Q. And has he paid you the rent?
A. Sometimes; there were other partners; it is a company; sometimes the other persons do, and sometimes he did, too.
Q. Did he hold himself out to you as one of the partners?
A. As one of the partners.

40 Cross-examination by Mr. IZARD:

Q. You testified, Mr. Feldman, that this man was a member of this firm?
A. I did.
Q. If you know that you know what the amount of his interest was in the firm?
A. He is a partner of the firm.
Q. You do know what his interest was?
The COMMISSIONER. The amount of capital he had.
A. Amount of capital I don't know; never went into that detail.
Q. Then you have doubtless seen his name among the other names of members of that firm?
A. I have.

Q. In what writing?

A. In Chinese.

Q. In what character of paper? You have examined it?

A. It was translated to me when we gave him a lease, the firm composed of Kwong Yen Ti & Company, and they were written down in order, going according to numbers, just from one to five, and I believe that he headed it, it is so many years since, but he was heading the contract; they signed a lease and it was translated in English.

Q. You undertake to swear that he was one of the signers for the lease of that building?

A. Kwong Yen Ti & Company.

41 Q. I was not speaking of that company, I am speaking of this defendant. You swear that he signed that lease?

A. He did.

Q. What has become of that lease?

A. I don't know.

Q. Won't your books show what became of it?

A. I collected from the firm.

Q. I am speaking of the lease.

A. That lease has expired.

The COMMISSIONER. Haven't you got it?

Q. Don't you keep a copy of it?

A. I don't think I have it at all; I know that we keep copies of all these leases; we give leases to a number of them, and as soon as they move out or the terms expire we destroy them.

Q. How do you keep track of them?

A. Just while they are in course.

Q. You mean to tell me that as a real-estate firm you issued leases——

A. Not a real-estate firm.

Q. You issue leases and don't keep any copy or record of it in your business?

A. We take a copy or a duplicate and give them one and we take one.

Q. Why didn't you say that before? What became of that duplicate?

A. We make no record of them. We don't keep them; we

42 destroy them the moment they are out of our place—of our premises; we don't make any record; we don't keep it any more; we don't keep this lease.

Q. What transactions have you ever had with this man as a member of the firm, and when were those had?

A. None; excepting for to collect the rent.

Q. Well, mention a time.

A. From the 1st of the—from the 1st of the month until about the 5th, since 1891, until their lease expired.

Q. And when did that lease expire?

A. In 1895.

Q. Will your books show that?

A. No.

Q. Why not?

A. Because we make no entries of that.

Q. You don't make any entry of all your lease accounts in your books?

A. We make no entries—we got the lease.

Q. Then when you collect this money you have no account open with that concern on your books?

A. They paid cash.

Q. What account did you keep of your cash receipts?

A. We give him credit in a little pocketbook.

Q. That is the only book you kept—you don't keep any ledger account?

A. No.

Q. So that at the end of the month or at the end of the year all you have got to show for your transactions during the years you were custodian of this building——

43 A. I am not the custodian.

Q. (Continued.) Well, agent for them, is contained in this pocket memorandum?

A. I collect on a slip, hand it to the landlord, give him every month the rent I collect, and I have no further bookkeeping transactions.

Q. Then you were personally agent of the landlord, and your real-estate firm was not?

A. I am collecting personally.

Q. Then the real-estate firm you were connected with had nothing to do with this lease?

A. I collect the rent and turn it in to the landlord.

The COMMISSIONER. You don't understand him, Mr. Feldman, or he doesn't understand you. He asks if you collect rent as the agent of the firm or the agent of the landlord.

(Mr. Izard's question objected to as misleading.)

Q. You are not connected with Forges' office?

A. I have kept my office in there.

Q. You are not connected with their office further than to have your desk there?

A. Further than collecting rents for them.

By the COMMISSIONER:

44 Q. Do you collect these rents for the landlord or for these people?

A. I collect these rents for Forges and Alexander, and they are the landlords.

Q. Then when you turn in your rents to Mr. Forges or Mr. Alexander, as the case may be, you merely strike off that whole month's transaction?

A. So-and-so has paid for that month.

Q. Does your memorandum book show that you collected rents from this defendant or that you collected rents from the firm of Kwong Yen Ti?

A. I had that on my memorandum; I haven't got it now.

Q. Had what?

A. I say, I have on my memorandum book when I turned in cash for various firms I was collecting, I used to turn in a slip collected of No. so-and-so, this No., this side, 1st floor, 2nd floor, each one by number; of course in each number, as people were living there, I didn't need to mention their names.

Q. And you never did?

A. No, sir; didn't need to.
Q. You testified that this defendant always paid you the rent?
A. Yes, sir.
The COMMISSIONER. No.
The WITNESS. I did not testify that.
Q. You testified he occasionally paid you the rent?
45 A. Occasionally, yes.
Q. Who generally paid the rent at that place?
A. Sometimes he did, sometimes some of his partners.
Q. Well, who, for instance, when he didn't?
A. Some of his partners.
Q. You can't mention their names?
A. I remember some of their names. A little fellow by the name of Kat.
Q. You collected from Lee Kat, and from whom else?
A. Another partner there who goes by the same name as he did, it is different in the spelling, Tom Pong.
Q. You collected from Lee Kat, and from the defendant, and from Tom Pong?
A. Yes.
Q. Were they all that you remember?
A. There were some others, there were some Yungs and Nums; two more were there.
Q. You also collected from them?
A. Yes; very seldom, these were the stand-bys of the firm.
Q. Yes; did you ever see the partnership articles of these people?
A. I did; yes.
Q. You did not?
A. I did see it, at least I couldn't understand their language, but they showed me a certain ticket that was made amongst them. I
46 couldn't read any Chinese?
Q. Then you don't know whether you saw the partnership articles or not?
A. That was shown to me as their arrangements.
Q. Who told you?
A. Their bookkeeper, Tom Dock.
Q. This defendant, what did he tell you?
A. When I first came he introduced all the other partners to me.
Q. You say he told you these were the partners, and you say that he introduced you to the partners. What did he say about the partnership articles?
A. He said those are the documents, whatever it was, he thought I could read his language.
Q. You think it was natural for him to conclude that you could read his language?
(Objected to. Objection overruled. Exception.)
Q. How did you learn about Tom Dock being in difficulties now?
A. He came to me?
Q. When?
A. Down to 23 Division street.
Q. When?
A. Some ten or twelve—fifteen days ago.

Q. Never came before that?
A. Never came before.
Q. You didn't know anything about his arrest until about ten days ago?
A. Why should I know of his arrest?
47 Q. You didn't know that he was arrested up to 10 or 12 days ago?
A. Something like that, he came to me and asked if I could identify him.
Q. Answer my question, I say not more than 15 days ago?
A. Something like that.
Q. You didn't know that he was arrested four or five months ago?
A. I did not.
Q. What did Tom Dock say to you when he came?
A. Told me whether I remember him, I said I did, whether I would go and testify that I know him that he was in business, I said I would.
Q. You did that just simply as a matter of accommodation, of course?
A. Accommodation.
Q. You have never seen these partnership articles but once?
(Objected to as already answered.)
The COMMISSIONER. Ask him if he saw them more than once.
Q. (By the COMMISSIONER.) This ticket that Tom Dock showed you the first time, did you ever see it again?
A. I did not see it any more.
Q. (By Mr. IZARD.) Would your memorandum of collections
48 show who paid the rent each time?
A. I told you my slip; no memorandum.
Q. It wouldn't show what individual paid it?
A. I am under oath.
Q. Are you able to swear that this defendant ever paid you that rent?
A. I have sworn to it, I am under oath and I don't swear again, I have made my statement; I know that this defendant has paid me the rent.
Q. Now you are very positive about it?
(Objected to as already answered.)
The COMMISSIONER. Answer it again, Mr. Feldman.
A. I am positive that this defendant has paid me the rent.
Q. Now, can you tell what year he paid you the rent?
A. '91 to '95.
Q. (By the COMMISSIONER.) Every year.
A. Not every year, his partners all these five years may have paid me sometimes.
Q. (By Mr. IZARD.) Can you swear that he paid you the rent at any time during the year 1891, this defendant, I am not talking about the firm?
A. I can.
Q. And you do swear?
A. I do swear.
49 Q. Do you swear that he paid you the rent in 1892?
A. I can't remember.
Q. Do you swear he paid you the rent in 1893, on your oath?

A. I am under oath and you ask me every time whether I swear. I am satisfied he did.

Q. Can you swear in 1894, this individual defendant?

(Objected to as immaterial, incompetent. Objection overruled. Exception.)

A. He did.

Q. You swear that?

A. Yes, sir.

Q. What month?

A. I can't remember.

Q. You can't remember the month?

A. The month; no, sir.

Q. If you can't remember the month, can you swear that he paid during the year——

(Same objection, ruling, and exception.)

Q. Can you swear that he paid you the rent in 1895?

A. I can.

Q. You do swear?

A. I do.

Q. How much rent did he pay you?

A. $65 per month.

Q. During the whole period of that lease?

A. During the whole period of that lease?

50 Q. And what was the period of that lease?

A. Five years.

Q. From what date?

A. From October, '91, until '95.

Q. Does that make five years?

A. Including '95.

Q. Have you been, during the whole time that you have been in business, at this No. 23½ Division street?

A. All the time, every time to be found there?

Q. For sixteen years, I believe you said?

A. I said since 1890.

Q. At 23½ Division street?

A. I answered sixteen years I am in business in New York City.

Q. But at Division street since 1890?

A. Since 1890.

Redirect examination by Mr. McMANUS:

Q. These Chinamen were pretty methodical and pretty prompt in payment of their bills?

A. Very prompt; up to two or three calls I collected always my rent.

Q. A good deal more prompt than most white people?

A. They have the name for that, paying their rents very prompt.

51 Recross-examination by Mr. HOWELL:

Mr. McMANUS. I object to two counsel examining one witness.

(Objection overruled. Exception.)

Mr. HOWELL. I want to ask this, as to what year it was that he testified that this particular defendant did not pay him during the period.

Mr. McMANUS. '92, that was.

Mr. HOWELL. I wanted him to tell, not you.

(Objected to on the ground that one counsel has taken up this examination and one should conclude it.)

The COMMISSIONER. Ask it, Mr. Howell.

(Exception.)

Q. How is it that you remember that during that one year of all these years that this man didn't pay you the rent?

A. I didn't say that.

The COMMISSIONER. That wasn't what he said. What he said was he couldn't remember whether he did pay in '92.

52 Mr. MCMANUS. I ask for the discharge of the defendant.

Mr. IZARD. We object. Objection based absolutely on the decision of the United States circuit court of appeals in the United States against Ping Kwong, and we would like to cite your honor that case and the case of United States against several Chinese, decisions by Judge Brown of the district of Rhode Island, which apply the Ping Kwong decision and differentiate between the Lee Kan decision, upon which the defendant, of course, relies, and the Ping Kwong decision, both circuit court appeals decisions, the only argument entirely sustained in Judge Lacombe's review of this case.

Decision reserved.

Adjourned to December 15th, at 11 o'clock; counsel to submit briefs.

53 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. McManus and Mr. Howell:
Mr. McManus presents argument.
Mr. Howell presents argument in opposition.
Mr. McManus moves for discharge of defendant.
Mr. Howell moves to deport.
Decision reserved.

54 UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances same as before.

The commissioner hands counsel written opinion and orders deportation of defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

55 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Tom Dock, was not born in the United States, and was a Chinese laborer without certificate of residence, and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a
56 transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated, New York, December 27th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant,
170 Broadway, New York City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

57 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Abraham Gruber, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

58 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in

the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Tom Dock should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

ABE GRUBER.

Subscribed and sworn to before me this 29' day of December, 1902.

H. M. SPENCE,
Notary Public, Kings County.

Certificate filed in New York Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

59 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK.

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, borough of Brooklyn, on the 15th day
60 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Tom Dock is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as to in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order allowing appeal. Filed and entered the 29th day of December, 1902.

61 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO, ALIAS CHU GEE.

March 18, 1903.

62 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

63 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the 28th day of March, A. D., 1903.

Present: The honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

The defendant above-named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant Tom Dock, alias Hom Dock, having come on for hearing before the said United States commissioner, and evidence having been taken therein and the said United States commissioner having, on the 18th day of December, 1902, entered a judgment herein, and
64 having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order

of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Tom Dock, alias Hom Dock, be removed to the country from whence he came, to wit,
65 the Empire of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*,

(Endorsed:) Order filed and entered the 28th day of March, 1903.

66 United States district court, eastern district of New York.

UNITED STATES
vs.
TOM DOCK, ALIAS HOM DOCK.

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth, in substance, that one Tom Dock, alias Hom Dock, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien; that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Tom Dock, alias Hom Dock, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing
67 the respondent claimed that he was a merchant at the time the Chinese exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Tom Dock, alias Hom Dock, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from

said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

68 Therefore, it is hereby ordered, adjudged, and decreed that the said Tom Dock, alias Hom Dock, be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

69 District court of the United States, eastern district of New York.

UNITED STATES
against
TOM DOCK, ALIAS HOM DOCK.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty., Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

70 United States Supreme Court.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Tom Dock, alias Hom Dock, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

71 Ordered that this appeal shall operate as a supersedeas to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

72 United States Supreme Court.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES.

The above-named appellant on this appeal from the order of the district court of the United States for the eastern district of New York, confirming the order of deportation, by B. Lincoln Benedict, United States commissioner, for his assignment of errors, herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, erroneous, for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the borough of Manhattan, city of New York, which business was conducted

73 under the name of a firm of which he was a member; and in not holding that the appellant was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between the

73 United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had

been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

75 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed.) Assignments of error. Filed April 20, 1903.

76 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms, in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, justice.

TOM DOCK, ALIAS HOM DOCK, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court therein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Torence J. McManus in support of the said motion, and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

77 In the Matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit in the case of The United States vs. Pin Kwan requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case which differed from the pres-

ent one. Admitting the distinction I do not think the United
78 States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kitt, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kitt, Tom Hong, and Tom Dock made on the 18th day of Dec., 1902, and remaining on file in my office.

B. LINCOLN BENEDICT,
[L. S.] *U. S. Comm.*

79 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Tom Dock, alias Hom Dock, made up to be transmitted to the United States Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.] RICHARD P. MORLE, *Clerk.*
By PERCY B. GILKES, *Deputy Clerk.*

80 UNITED STATES OF AMERICA, ss.

To The United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Tom Dock, alias Hom Dock, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18962, E. New York, D. C. U. S. Term No. 311. Tom Dock, alias Hom Dock, appellant, vs. The United States. Filed June 2, 1903. Received office Supreme Court of U. S., May 28, 1903.

O

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 312.

YUNG LEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 8, 1903.

(18963.)

27187

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 312.

YUNG LEE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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8905—03——1

1 EASTERN DISTRICT OF NEW YORK, ss:

J. H. Jenkins being duly sworn, deposes and says: That he is a Chinese inspector duly appointed under the statutes of the United States; that one Yung Lee a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district a certificate of residence required by section 6 of the act of Congress approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate was, on the 24th day of July, 1902, found within the jurisdiction of the United States at Brooklyn in said district without certificate of residence as required by law. Wherefore deponent complains and prays that a warrant of arrest may issue against the said Yung Lee that he may be dealt with according to law.

J. H. JENKINS,
Chinese Inspector.

Sworn to before me this 24th day of July, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York and to his deputies, or any or either of them.

Whereas complaint on oath has been made to me, charging that Yung Lee was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer without certificate of residence as required by law and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Yung Lee wherever he may be found, and bring his body forthwith before me or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America vs. Yung Lee.

Warrant to apprehend. Bail in $500, taken July 28, 1902.

The within-named Yung Lee arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES } Judgment.
vs.
YUNG LEE. }

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Yung Lee, on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law, whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Yung Lee, and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner, for a hearing; and

5 Whereas, thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner, at which hearing the said Yung Lee by his counsel claimed to have been born in the United States and to be lawfully entitled to be and remain therein.

Now, after a full hearing thereon, it is by me found and adjudged on this 18th day of December, 1902, that the said Yung Lee is a Chinese laborer found without certificate of residence as required by law within the United States, was not born in the United States, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Yung Lee be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

6 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth in substance that one Yung Lee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent—who was unlawfully and without right within the United States, whereupon a warrant was issued by said commissioner for the arrest of the said Yung Lee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner, at which hearing the
7 respondent claimed that he was a laborer who was unavoidably prevented from obtaining a certificate of residence within the time fixed by statute, and after a full hearing thereon it was found and adjudged by said commissioner that the said Yung Lee was not born in the United States and was without right, under the law, in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner, that the said Yung Lee, as aforesaid, be removed from the United States to the country from whence he came, to-wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner, Eastern District of New York.

(Endorsed:) Order of deportation.

8 *Certificate of United States Commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation, on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Yung Lee to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceedings before U. S. commissioner. Filed, December 29, 1902.

9 UNITED STATES
vs.
YUNG LEE.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 15th, 1902.

Appearances: George H. Pettit, esq., United States district atty., by Mr. Howell, Ralph Izard, esq., Chinese inspector, for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus, for the prisoner.

It is conceded that the defendant, Yung Lee, was apprehended on the 23rd day of July, 1902, without a warrant, at the premises 34 Myrtle avenue, Brooklyn, New York, by a Chinese inspector, who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was

arrested under a warrant issued by United States Commissioner
10 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. McManus. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law;
11 fifth, upon the ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

Yung Lee, called as a witness on his own behalf, being duly sworn, testifies, through the interpreter, George Moy Way (also duly sworn), as follows:

Direct examination by Mr. McManus:

Q. Your name is Yung Lee?
A. Yes.
Q. Where do you live?
A. Myrtle avenue.
Q. What number Myrtle avenue?
A. 34 Myrtle avenue.
Q. How long have you been there?
A. Four days.
Q. When you were arrested?
A. Yes.
Q. How long have you been in the United States?
A. I have been in United States 23 years.
Q. 23 years, and you speak English a little?
A. No; I can't speak English.

Q. You do business with English-speaking people, don't you?
12 A. No; that is all I got to do, when the customer in my laundry he give me the bundle and I give him the ticket.
Q. You know how to make change, don't you?
A. Yes.
Q. What business have you been engaged in since you came to the United States?
A. I am a laundryman.
Q. How old are you?
A. I am forty years old.
Q. What were you doing during the years 1893 and 1894?

A. 1893, of November, I had the disease; sick; been sick to 1894. I perfectly cure my disease about August, 1894.
Q. What was the matter with you, if you know?
A. My foot was ill, kind of rheumatism, sore.
Q. And it kept you to your bed for several months; is that right?
A. Yes; I had that disease from November of '93 to August, '94.
Q. Prior to that what were you working at?
A. I work at Brooklyn.
Q. Where were you sick?
A. I was in New York when I was sick.
Q. In what place in New York?
A. Forsythe street.
Q. Forsythe street, what number, do you know?
A. 158.
Q. 158 Forsythe street, in the city of New York; was that a laundry?
A. Yes.
13 Q. And were you sick in the back of it, or where?
A. Yes.
Q. Did you have a doctor?
A. Yes.
Q. Was he a Chinese doctor or an American doctor?
A. Chinese doctor.
Q. What was his name?
A. Leong Yow.

Cross-examination by Mr. HOWELL:

Q. Was there anything else the matter with you beside your foot?
A. No; that is all, my foot.
Q. What did the Chinese doctor tell you was the matter with it?
A. Says rheumatism.
Q. What did you do while you were sick?
A. I can't work, but I get somebody work for me.
Q. What were you doing then?
A. I can't work at anything, but I stop in a laundry, get the doctor to call to see me.
Q. How many people lived in the house with you?
A. I lived there and had a fellow lived with me, because he working for me.
Q. And this fellow of whom you speak, was he a friend of yours?
A. He is my cousin, who work for me.
Q. Did he get a certificate, do you know?
14 (Objected to as immaterial, irrelevant, and incompetent. Objection sustained.)
Q. Did you make any effort to get a certificate for yourself?
A. No; I get no certificate.
Q. Did you try to get a certificate for yourself?
The INTERPRETER. Laborer's certificate?
Mr. HOWELL. Yes; did he try to get any certificate?
The COMMISSIONER. Not whether he did get one, but did he try to get one.
A. Of course I want to get one; but I can't walk, I can't do anything.

Q. Did you send the man who worked in the laundry with you for one?

(Objected to as incompetent, immaterial, and irrelevant, and not required by the act. Objection sustained.)

Q. When were you taken sick?

A. 1893.

Q. In what month?

A. November.

Redirect examination by Mr. McMANUS:

Q. You were sick in bed most of this time, weren't you?

A. Yes; I was sick in bed.

15 Q. And you were not able to go out until after August, were you?

A. Yes; until August, I was not able to go out.

Q. And that was August, 1894?

A. Yes.

DENNIS O'SULLIVAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McMANUS:

Q. Mr. O'Sullivan, what is your business?

A. I was in the grocery business for about 23 or 4 years.

Q. When did you retire from it?

A. A couple of years ago.

Q. Where was your place of business?

A. 28 and 30 Cherry street.

Q. 28 and 30 Cherry street. You were in business for yourself?

A. No, sir; I was not, I was salesman for John Randall.

16 Q. At that number?

A. Yes.

Q. Where do you reside now?

A. 130 Park Row.

Q. 130 Park Row?

A. Yes, sir.

Q. Do you know this defendant?

A. Yes, sir; well.

Q. How long have you known him?

A. I think it is, to the best of my opinion, somewhere in the latter part of the seventies; I think about '78 or '9, I think to the best of my opinion.

Q. And where did you know him first?

A. I knew him in 158 Forsythe street, him and his father.

Q. How many years was he there?

A. I believe he was there over twelve years.

Q. And how did you come to know him?

A. I always solicited trade.

Q. From whom?

A. From the Chinamen.

Q. Grocery trade?

A. Yes; rice, soap, starch, and glue, everything in that line.

Q. And it was your habit to visit——

A. Once a week.
Q. (Continued.) Chinamen all over New York?
A. Yes.
Q. Once a week?
A. New York and Brooklyn—Brooklyn was my principal route.
17 Q. You saw him, you say, at 158 Forsythe street for a number of years?
A. Yes.
Q. Do you remember seeing him there in the year '93 and '94?
A. He was sick then, laid up; he was a puny little creature, very puny, thin; I never thought he'd be the man he is to-day.
Q. You saw him there in bed and during a part of the year '93?
A. Yes.
Q. Do you remember when it was?
A. Well, he was there, I know, in April. In April he was always grumbling, but in about July and August in that time he was actually laid up.
Q. Of what year was that?
A. 1883.
Q. '83?
A. 1883—I mean 1893.
Q. 1893?
A. Yes.
Q. How long in the year '94 did that illness continue?
A. I changed my route after that; I changed my route; I was visiting there something about twelve years, his laundry, and I changed my route into Jersey.
Q. You saw him in bed there for several months about some time in '93?
A. Yes, sir; I can't testify to the exact time.
Q. When did you give up that route—around the end of the year, or when?
A. About September.
18 Q. How many times since have you seen him?
A. I haven't seen him a great deal for the last four or five years.
Q. You have seen him in this country for how many years off and on?
A. The first time I saw him was with his father in 158 Forsythe street. His father was an old man.

Cross-examination by Mr. HOWELL:

Q. What is your present business?
A. I am in the music business now.
Q. Where?
A. 130 Park Row.
Q. Is that where you live also?
A. No, sir; I also live at 128 Park Row; have a furnished room there.
Q. How long have you been in the music business?
A. Going on three years.
Q. What were you doing up to that time?
A. I was salesman.
Q. For the grocery store?

A. Yes, sir.
Q. And where was this grocery store?
A. 128 Park Row, 28 and 30 Cherry street.
Q. What did you say the name of the proprietor of that place was?
A. John Randall.
19 Q. How long were you with him?
A. Over 23 years with him.
Q. So you went with him *about 26 years* ago?
A. Yes.
Q. Do you remember just the year that you went with him?
A. I don't.
Q. What was the first line of business that you took up with him; what did you do?

A. I was on the route here in Brooklyn, I was getting up an imitation of cut roses, imitations of perfumery, and going over Brooklyn I used to visit these laundries; I was acting detective in getting up all these imitations or trade-marks.
Q. You were acting detective in getting up all these imitations?
A. I got up all the imitations on Pinaud's and Rubin's perfumeries.
Q. Amongst whom did you solicit your trade?
A. All druggists, first-class notion houses; in Brooklyn, New York, Philadelphia, Jersey, Buffalo, Albany, and every State as far as Louisiana.
Q. Was your trade—how did you come to have such a large trade with Chinamen?

A. As I was going around, Randall's was after me for three or four years to know if I wouldn't take up a route and sell, and that it
20 would bring me in a great deal better living. I told him I didn't care much about it. He says, "You are foolish," and at last, when we closed the cases, all these trade-mark cases, we got them into court, then I thought I would do better by going around and soliciting the Chinee trade.
Q. Did you solicit Chinese trade on a large or a small scale?
A. Very large. I sent more cases to Brooklyn in one week than they send now in four weeks.
Q. Did you come to know a great many Chinamen?
A. I believe there is not a man in New York, outside of another man who was in the store by the name of Bassell, who knows more of them.
Q. Give me something a little more definite than that. Do you know them in very large numbers, or do you know a half dozen of them, or do you know several hundred of them?
A. I do.
Q. And you did at that time?
A. Yes, sir.
Q. How long did you solicit trade from these people?
A. Over 23 years, over 23 years.
Q. And so you think that you must have come to know a great many hundreds?
A. Yes.

Q. Do you suppose you knew a thousand or two thousand?
21 A. I don't know how many I might know, but I don't think there is a man in New York that knew more of them, and more of them knows me than I know of them or can remember.

Q. How intimate were your business relations with them?
A. Very intimate.
Q. How much did you see of them?
A. There was not a night, after my day's work, scarce, that I wasn't in Chinatown looking for men to collect from and that would be there from out of the city that I get orders from.
Q. *How long is it since you have done any of this Chinese business*, now?
A. About a couple of years.
Q. When did you first meet this man, the defendant, who was on the stand?
A. To the best of my opinion about '79.
Q. What were your business dealings with him?
A. Selling rice, soap, chloride lime, potash, and such things used in Chinese laundries.
Q. Your business dealings with him were just the same as with mostly every Chinaman?
A. Yes, sir.
Q. Do you remember when you met each particular Chinaman?
A. No.

Q. How is it that you remember just when you met this
22 particular Chinaman here?

A. I always went, after I go off there in Jersey, I went to every store in Chinatown, and to other stores besides up in the Tenth Ward, and I used to go there in the evening after I had my supper.
(Motion to strike out as irresponsive.)
The WITNESS. I didn't know the exact time.
Q. You said about the year '79?
A. I had no particular hour to go to them.
Q. It is not the hour I am asking about; how is it that you recall when you first met this particular Chinaman, the defendant here, and don't remember when you met other Chinamen?
A. I had no particular hour to go to him or to anyone else.
Q. The hour wasn't the question.
A. He was on the route.
Q. How is it that you remember the year when you met this Chinaman, which you say was the year '79?
A. Yes.
Q. And don't remember when you met other Chinamen?
A. Everyone that was in New York that I had on my route, or that I couldn't take one night, I took them the next night.

By Mr. MCMANUS:

Q. What year did you begin this Chinese business?
23 Mr. HOWELL. He said about '79 or '80.

A. I told you I answered that question, it was my testimony in '79 I commenced business.

By the COMMISSIONER:

Q. You say in '79 you began this trade? Did you meet this man the first year?
A. He was there with his father.

By Mr. McMANUS:

Q. Was it the first year?

A. Yes.

Q. Do you remember any other Chinamen that you began trade with in '79? Give me the name?

A. I used to sell the whole of them in Mott street, stores and every place.

Q. How do you remember this man and don't remember the name of anybody else?

A. I know Goon Op, he is in Forsythe street.

Q. Then you do remember some others?

A. Yes; but he didn't call for me to answer that I knew them.

By Mr. HOWELL:

Q. Did you see many sick Chinamen in those days?

A. I have, sir.

Q. Do you remember what their various sicknesses were, and how long they were sick?

A. I am not a doctor to answer that question. You are aware of their sicknesses as well as I am.

24 Q. How is it that you remember this man's particular sickness that you testified to and don't remember about other people?

A. Because their place is very small, they had room for only two ironers in the place—the place was not big—and right beside the desk was their room, him and his father.

Q. He and his father; was anybody else in the laundry?

A. None when I went there first.

Q. When was anybody else in there?

A. I couldn't tell; it may be customers come in and out.

Q. When he was sick who was in there with him?

A. None that I know of; none when I first went there.

Q. That was 23 years ago that you first went there. Who was with him when he was sick—you said his father?

A. His father, in the laundry, ironing.

Q. With him?

A. Oh, two of them were in the laundry.

Q. But there was nobody else there at that time?

A. None that I saw there.

Q. What was his father's name?

A. It is a very odd name. I know his last name, it is spelt with three or four letters.

Q. But you don't remember beyond that?

A. I don't remember, it is so long.

25 Q. What particular reason is there for your recalling that this man was taken sick in bed along in June or July, didn't you say?

A. Yes; somewhere around there; I don't know the exact date.

Q. Of '93—what makes you particularly recall that time?

A. I will tell you, a very silly instance; he had a pipe, at least he promised me to give me a pipe which was like a trombone; he was not able to get it for me—this pipe.

Q. Are you sure that it was in the early summer that he was taken sick in bed?

A. It was in the summer; I can't state the date of it.
Q. And how long was he sick?
A. A good while, maybe four or five months; he was always ill.
Q. But you are sure that he went to bed sick in the summer sometime?
A. I saw him in bed; I don't know the exact date or the exact month, but I saw him in bed.
Q. Do you remember what year it was that you first saw him in bed; was it '93 or '94?
A. '93 I saw him in bed. The first time I saw him he was working in the laundry with his father.
26 Q. Do you know whether it was in the summer time or in cold weather that you saw that he went to bed there first?
A. In the summer time.
Q. How long was he sick?
A. I can't state how long he was sick.
Q. Didn't you say it was three or four or five months?
A. Maybe something about three or four months, or more.
Q. Or less, you don't remember?
A. I can't recall it to my mind.
Q. How did you happen to get in this case this time as a witness?
A. Him and two others—they were after me, and I am not on speaking terms with Randall since I left there; me and his sister had some words; I left there; he couldn't give my number.
Q. The Chinamen went to Randall's store to get you?
A. To see where I was, so Randall's couldn't tell them where I was living, but he referred him to 128 Park Row, where I was living; but he don't know where I was living, so him and two other Chinamen came up alooking for me, and the clerk of the house said there was one there by the name of O'Sullivan, but he said where he was he didn't know at the time.
Q. But he found you there eventually?
A. Yes.
27 Q. How long ago was that?
A. I believe within a week or ten days.
Q. Within a week or ten days?
A. Yes.
Q. I want to go back for just a moment. What was your method of conducting the business with these Chinamen, just go and see them?
A. Go and see whether they want anything.
Q. Were they in the habit of sending for you to go to see them?
A. No.
Q. Never sent for you?
A. They may have sent postal cards if I wasn't there in a week.
Q. Had you informed them where your place of business was?
A. The house informed them.
Q. Then you sold——
A. I sold on commission.
Q. But you sold to them on credit, or did you sell cash?
A. Sold them credit; some I used to get cash for.

By Mr. McManus:

Q. Pretty good pay, aren't they?
A. Some are and some very bad pay.

Redirect examination by Mr. McManus:

Q. You know he was sick in the summer?

A. I do.

Q. And you know that he was sick for several months?

A. Yes.

28 Q. And the sickness that you saw in the summer might have been lasting some time?

A. I couldn't tell how long it lasted.

(Objected to.)

Testimony closed.

Mr. McManus moves for the discharge of the prisoner on all the grounds set out in the cases of Chu Do and Lew Guey, as well as on the evidence.

Counsel for the Government asks for order of deportation.

Decision reserved.

29 UNITED STATES }
vs.
YUNG LEE. }

Before B. Lincoln Benedict, esq., United States Commissioner.

BROOKLYN, *December 18th, 1902.*

Present: Mr. Howell and Mr. McManus.

The commissioner hands counsel written opinion and orders deportation of defendant.

Mr. McManus takes exception to the ruling and states he will appeal.

30 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Yung Lee, was not born in the United States and was a Chinese laborer without certificate of residence and without a right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the said order
31 was made, duly authenticated, may be sent to the said judge.

Dated, New York, December 27, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for defendant,
170 Broadway, Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed, December 29, 1902.

32 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested by a Chinese inspector without any warrant for his arrest having been issued.

33 III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1893, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statutes.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Yung Lee should be taken for a hearing.

VIII. For other errors appearing in the record of said trial.

TERENCE J. MCMANUS.

Subscribed and sworn to before me this 29th day of December, 1902.

WM. N. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

34 United States district court, eastern district of New York.

UNITED STATES }
vs.
YUNG LEE. }

On this 29th day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon

the United States district attorney, and that said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district court in and for the eastern district of New York, appointed to be held at the city of New York, Borough of Brooklyn, on the 15th day
35 of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Yung Lee is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered the 29th day of December, 1902.

36 United States district court, eastern district of New York.

UNITED STATES
vs.
LEW GUEY.

SAME
vs.
TOM DOCK, ALIAS HOM DOCK, LEE KIT, AND Tom Hong, alias Hom Poe.

SAME
vs.
AH HOW.

SAME
vs.
YUNG LEE.

SAME
vs.
YUNG BONG.

SAME
vs.
CHU DO, ALIAS CHU GEE.

March 18, 1903.

37 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

38 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the Borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
YUNG LEE.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Yung Lee, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of
39 December, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of the counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation, entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Yung Lee be removed to the country from whence he came, to wit, the Empire
40 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

41 United States district court, eastern district of New York.

UNITED STATES
vs.
YUNG LEE.

Whereas, on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth in substance that one Yung Lee, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Yung Lee, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing
42 the respondent claimed that at the time the Chinese exclusion acts went into effect, and for six months thereafter, he was unable through illness to procure a certificate; and after a full hearing thereon it was found and adjudged by said commissioner that the said Yung Lee was not so incapacitated, and was not born in the United States, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Yung Lee, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas,
43 district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

Therefore it is hereby ordered, adjudged, and decreed that the said Yung Lee be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the Borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day. of March, 1903.

44 District court of the United States, eastern district of New York.

UNITED STATES
against
YUNG LEE.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty., Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

45 United States Supreme Court.

YUNG LEE, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Yung Lee, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further

Ordered that this appeal shall operate as a supersedeas to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

46 United States Supreme Court.

YUNG LEE
vs.
UNITED STATES.

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York

confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that the said Yung Lee was a Chinese laborer in the United States entitled to a certificate under the provisions of Section VI of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, and that having established to the satisfaction of the said commissioner by the testimony of a credible white
47 witness that he was a resident of the United States on and prior to the 5th day of May, 1892, it should have been held by such commissioner that by reason of the illness of the said Yung Lee he was unable to procure a certificate of residence and was entitled to such certificate.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese-exclusion acts, or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established by affirmative proof that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions; and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty between
48 the United States and China, promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over the appellant, in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States) by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

49 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignment of error. Filed April 20, 1903.

50 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms, in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present: Hon. Edward B. Thomas, justice.

YUNG LEE, APPELLANT,
against
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein, the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus, in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is

Ordered that the said motion be and the same hereby is granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

51 Before B. L. Benedict, U. S. commissioner, eastern district of New York.

In the matter of Yung Lee.

In this case it is sought to be shown that the Chinese person named, who was a laborer, did not procure the certificate of residence from a collector of internal revenue as required by sec. 6 of November 3, 1893, because he was unavoidably prevented from so doing by sickness until after the expiration of the time set by the statute within which such certificate might be given. It is established to my satisfaction and by a credible white witness that he was resident in the United States on the 5th of May, 1892; but it is not clearly established and to my satisfaction that he was unable through sickness during all the time given by the statute to obtain a certificate of residence. It follows that he must be found and adjudged to be unlawfully within the United States.

52 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Yung Lee, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.]

RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKS,
Deputy Clerk.

53 UNITED STATES OF AMERICA, ss:

To the United States greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Yung Lee is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

54 (Indorsement on cover:) File No. 18963. E. New York, D. C. U. S. Term No. 312. Yung Lee, appellant, *vs.* The United States. Filed June 2d, 1903.

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27198

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 313.

LEE KIT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED JUNE 2, 1903.

(18964.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 313.

LEE KIT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 EASTERN DISTRICT OF NEW YORK, *ss:*

J. H. Jenkins, being duly sworn, deposes and says: That he is a Chinese inspector, duly appointed under the statutes of the United States; that one Lee Kit, a Chinese, and a laborer within the United States, at Brooklyn, in said district, not entitled to remain in the United States without certificate of residence, did knowingly and wilfully neglect and fail to obtain from the collector of internal revenue for the first collection district, a certificate of residence, required by section 6 of the act of Congress, approved May 5, 1892, as amended by the act of Congress of November 3, 1893, and having come unlawfully into the United States without certificate, was, on the 24th day of July, 1902, found within the jurisdiction of the United States, at Brooklyn, in said district, without certificate of residence as required by law. Wherefore, deponent complains and prays that a warrant of arrest may issue against the said Lee Kit, that he may be dealt with according to law.

Sworn to before me this 24th day of July, 1902.

J. H. JENKINS,
Chinese Inspector.

B. LINCOLN BENEDICT,
U. S. Commissioner, E. D. of N. Y.

(Endorsed:) Complaint. Filed July 24, 1902.

2 The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any, or either of them.

Whereas complaint on oath has been made to me, charging that Lee Kit was found within the jurisdiction of the United States on or about the 24th day of July, in the year one thousand nine hundred and two, in the borough of Brooklyn, in the county of Kings, in the eastern district of New York, being a Chinese laborer and without certificate of residence, as required by law and contrary to the Statutes of the United States in such behalf made and provided:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Lee Kit wherever he may be found and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with for said offence according to law.

Given under my hand and seal this 24th day of July, in the
3 year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

U. S. commissioner's office, eastern district of New York. The United States of America *v.* Lee Kit.

Warrant to apprehend. Bail in $500 taken July 28th, 1902.

B. LINCOLN BENEDICT,
U. S. Commissioner.

The within-named Lee Kit arrested and before the commissioner. Dated July 24, 1902.

CHARLES J. HAUBERT,
U. S. Marshal.

Filed July 28, 1902.

4 United States district court, eastern district of New York.

Before B. L. Benedict, U. S. commissioner.

THE UNITED STATES
v.
LEE KIT. } Judgment.

Whereas on the 24th day of July, 1902, a complaint was made by J. H. Jenkins, a Chinese inspector regularly appointed, and sworn to, and filed with B. L. Benedict, U. S. commissioner for the eastern district of New York, setting forth in substance that one Lee Kit on the 24th day of July, 1902, at Brooklyn, in said district, was then and there a Chinese person not entitled to be or remain in the United States, and was found unlawfully within the United States without certificate of residence as required by law; whereupon a warrant was issued by said U. S. commissioner for the arrest of the said Lee Kit and he was thereon arrested by the U. S. marshal for said district on the 24th day of July, 1902, and brought before me, the said B. L. Benedict, U. S. commissioner for a hearing; and

5 Whereas thereafter and on the 12th day of August, 1902, and by continuance from time to time to and including this 18th day of December, 1902, hearing in said case was had before me, the said U. S. commissioner; at which hearing the said Lee Kitt, by his counsel, claimed to have been a merchant doing business in the United States in 1893 and 1897, and therefore lawfully entitled to be and remain within the United States without obtaining a certificate of residence as required by law for Chinese laborers.

Now, after a full hearing thereon, it is by me found and adjudged, on this 18th day of December, 1902, that the said Lee Kit is a Chinese laborer found without certificate of residence as required by law within the United States; was not a merchant doing business within the meaning of the statutes in such case made and provided in the United States in 1893 and 1894, and is not lawfully entitled to remain in the United States.

And it is thereupon ordered and adjudged by me, the said U. S. commissioner, that the said Lee Kitt be removed from the United States to the country from which he came, to wit, the Empire of China.

Given under my hand and official seal at Brooklyn, in the
6 eastern district of New York, this 18th day of December, 1902.

[L. S.]

B. LINCOLN BENEDICT,
U. S. Commissioner.

7 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, Chinese inspector, before B. L. Benedict, United States commissioner, setting forth, in substance, that one Lee Kit on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien—that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lee Kit and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance from time to time to and including the 18th day of December, 1902, hearing in said cause was had before said commissioner,

8 at which hearing the respondent claimed to have been a merchant doing business in the United States on the 3rd day of November, 1893, and lawfully entitled to be and remain therein, and after a full hearing thereon, it was found and adjudged by said commissioner that the said Lee Kit was not a merchant within the meaning of the statutes in such case made and provided, and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lee Kit, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

Given under my hand and official seal this 18th day of December, in the year of our Lord one thousand nine hundred and two.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner Eastern District of New York..

(Endorsed:) Order of deportation.

9 *Certificate of United States commissioner.*

I, B. Lincoln Benedict, U. S. commissioner for the eastern district of New York, do hereby certify that the foregoing are true copies of an original complaint, warrant of arrest, judgment, and order of deportation on file in my office, made up, together with a copy of the testimony as taken down on behalf of the United States at the hearing before me, as a transcript of proceedings in the case of The United States vs. Lee Kit to be transmitted on appeal to the judge of the district court of the United States for the eastern district of New York.

Witness my hand and official seal, at Brooklyn, in said district, this 27th day of December, 1902.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Transcript of proceeding before U. S. commissioner. Filed December 29, 1902.

10 UNITED STATES
vs.
LEE KIT.

Hearing before United States Commissioner B. Lincoln Benedict, esq., at the Federal Building, Brooklyn, New York, December 8th, 1902.

Appearances: George H. Pettit, esq., United States district atty., by Mr. Howell; Ralph Izard, esq., Chinese inspector for the Government; Messrs. Black, Olcott, Gruber & Bonynge, by Mr. McManus for the prisoner.

It is conceded that the defendant, Lee Kit, was apprehended on the 23rd day of July, 1902, without a warrant, at a laundry on Myrtle avenue, Brooklyn, New York, by a Chinese inspector who found him there working as a laundryman. It is conceded that the defendant is a Chinese person; that on the 24th day of July, 1902, the defendant was arrested under a warrant issued by United States Commissioner
11 Benedict, after having been in the custody of the United States Chinese inspector until the warrant was issued.

It is also conceded that the defendant neither on the 23rd nor on the 24th day of July, 1902, produced a certificate of residence, though called upon to do so by the Chinese inspector through an interpreter.

Mr. MCMANUS. We make the same motions for the discharge of the defendant that were made in the case of Chu Do: First, on the ground that the Government has failed to show that the defendant was a Chinese laborer in the United States in 1892 or 1893; second, upon the ground that the information does not charge a violation of any law of the United States, and especially the Chinese exclusion law of 1892 or 1893; third, upon the ground that the acts of 1892 and 1893, in so far as a proceeding of this character is concerned, are repealed by implication by the act of 1902; fourth, upon the ground that it violates the provisions of the United States Constitution and that it deprives the defendant of his liberty and property without due process of law; fifth, upon the
12 ground that the evidence, if any, is barred by the statute of limitations; sixth, upon the ground that the arrest was not effected in a manner provided by law.

Motion denied.

Mr. Howell states that the Government's case is in, as per stipulation.

NATHANIEL J. FELDMAN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. MCMANUS:

Q. Mr. Feldman, do you know this defendant?

A. I do.

Q. How long have you known him?

A. I have known him ever since '91.

Q. Where did you know him then?

A. Know him as a member of the firm of Kwong Yen Ti & Company.

Q. Is that the man you referred to in the testimony in the case of Tom Dock as Kat?

A. Lee Kat.

Q. Did you see him in there?

A. I did, sir.

Q. How often would you see him in there?
A. As often as I came to the place for to collect the rent.
Q. And what was his business there?
A. Member of the firm; I find him there.
13 Q. Was he one of the people who were present when, or about, the time the lease was signed for those premises?
A. He was introduced to me by Tom Dock as one of the firm.
Q. Have you seen him in the place doing anything?
A. He has paid my rent—seen him working in there.
Q. Did you ever see him selling goods there?
A. I did.
Q. To whom; can you tell?
A. No; to their own Chinamen.
Q. What kind of goods was he selling there?
A. Teas and various importations of China.
Q. Was this a large or small store?
A. Fair—fair store, and large basement.
Q. The basement and the ground floor?
A. Yes, sir.
Q. What was he doing?
A. I haven't followed him; I know he was selling goods when I came there; as often as I came I saw him busy.
Q. He would sell goods?
A. Yes.
Q. The other, Tom Dock, was the bookkeeper, and sold goods also?
A. Yes.
Q. And Tom Hong, what did he do?
A. He was also one of the men selling goods.
Q. You are certain of the time between 1891 and 1895?
14 A. Yes, sir.
Q. And it was the same firm of Kwong Yen Ti & Company?
A. Kwong Yen Ti & Company.
Q. And your testimony as to him, his being there, will be substantially as in these other cases?
A. Just the same.

Cross-examination by Mr. HOWELL:

Q. Mr. Feldman, how do you know that this man, Le Kit, was a member of the firm of Kwong Yen Ti & Company?
A. Because he was introduced to me as a member of that firm.
A. By whom?
Q. By Tom Dock.
Q. By what other means do you know that Lee Kit was a member of that firm?
A. No other means.
Q. Did you ever see the articles of copartnership signed by the members of the firm?
A. I did.
Q. Is your view of that one of the things upon which you base your knowledge of the existence of the partnership?
A. Yes, and various other reasons.

Q. Then, there was another way that you knew there was a partnership?

A. When you ask the question I will answer.

The COMMISSIONER. He did ask, and you said, "No other reasons." Put it again.

15 Q. (Repeated.) By what other means do you know that Lee Kit was a member of that firm?

A. I don't understand your question.

Q. How did you know that this paper or instrument shown you constituted the articles of copartnership?

A. They said so.

Q. You don't know in any other way, do you?

A. No, sir.

Q. In what language was it written?

A. Their own language.

Q. What was the occasion of their telling you that these were their copartnership articles?

A. I came there to collect the first rent.

Q. Did you ask them whether they were members of a firm?

A. Yes, sir.

Q. Did you ask them for any proof as to whether they were members of a firm?

A. I didn't ask for proofs.

Q. Then why did they show it to you?

(Objected to as calling for conclusion. Objection sustained.)

Q. What was the occasion of their showing you these alleged articles of partnership?

16 A. Introducing their five partners as members of the firm of Kwong Yen Ti & Company to the collector for the landlord.

Q. What I want to know is this: What brought out that paper?

(Objected to as incompetent and in the nature of speculation; counsel wants the witness to read a meaning into these other witnesses' minds. Question excluded.)

Q. Then the only way that you know there was a partnership in that place was this, was it not, just answer this "yes" or "no," whether this is so: That the various members of a firm told you that there was a partnership and that they were members of a firm, and they showed to you a paper that they said was the articles of copartnership?

(Objected to as already answered. Objection sustained.)

Q. You say that you collected rents for a firm up at 23½ Division street?

(Objected to as misleading.)

Q. Well, firm or some agent up there, it doesn't make any difference what the names were, for parties at 23½ Division street, is that so?

A. I did.

17 Q. Many of their tenants, you testify in one of the other cases, were Chinamen in Chinatown?

A. Yes, sir.

Q. Did they have a large tenantry down in Chinatown there or were there only a few people?

A. Quite a number.

Q. What do you mean by "quite a number?"
A. I can't give you dimensions of——
Q. Do you mean there were six or eight firms?
A. Firms?
Q. Or were there forty or fifty people whom they had down there?
A. They ranged differently, firms and individuals.
Q. Well, from how many houses do you suppose you collected the rents down there?
(Question stricken out.)
Q. From how many individuals or partnerships or companies did you collect rents down there, in Chinatown?
A. Various ones.
Q. (By the COMMISSIONER.) How many?
A. I can't tell exactly.
Q. (By Mr. HOWELL.) Was it few or many?
A. Various—quite a few.
Q. How many do you think?
18 A. I can't give any exact number.
Q. Have you any idea whether it was six individuals, partnerships, or sixty?
A. I wouldn't put myself down to a number.
Q. But can't you give the court any idea whatever?
A. I wouldn't venture at all, unless I would first go and look it over.
Q. You remember all the members of this partnership—you have testified as to them?
A. I do.
Q. And you did your business with them between the years '91 and '95?
A. I did.
Q. How is it that you can remember those particular individuals—who they were and what your business with them was—and can't remember how many different people you collected rent from down there?
(Objected to as matter of argument. Objection overruled. Exception.)
A. It happens that I remember just exactly in this case.
Q. Just in this case, but you don't remember outside of this case?
A. I do remember various other things, but what you ask me I can't remember.
19 Q. What do you mean when you say "just remember in this case?"
A. Perhaps in this I remember well, but others I would not be able to remember well.
Q. (By Mr. MCMANUS.) Lots of other cases you remember well if you are reminded of them?
A. If I would only be called to it.
Q. (By Mr. HOWELL.) Just specify some other people from whom you collected, rents down there.
A. Various ones.
Q. Who?
A. Various.
Q. I know, but I want to know who?

A. I have lots of them—Ham Kaw——
Q. Where are they?
A. Up in the first floor.
Q. Of what address?
A. Of 15 Doyer street.
Q. Who else?
A. Sam Ti & Company.
Q. Sam Ti & Company?
A. Yes, sir.
Q. Where were they?
A. They were on the same floor, one side.
Q. Outside of that building where did you collect rents from Chinamen?
A. Outside of that building I used to collect in Pell street.
Q. What number?
A. 12.
20 Q. Where else?
A. The housekeeper used to collect. I used to send her around and she used to take the money from those little rooms?
Q. You didn't go to these other places?
A. I did go to the storekeepers, and to the dwellers I used to send the housekeeper.
Q. Who were the storekeepers from whom you collected?
A. I don't remember; mention them to me, and I will remember.
Q. Do you remember any other place——
A. Any other place; no, sir.
Q. (Continued.) From which you collected rent?
A. No, sir.
Q. (By Mr. McManus.) Were there any other places in Chinatown where you collected rent?
A. Plenty.
Q. How many houses altogether?
A. 12, 17, and 15 Doyer street.
Q. (By Mr. Howell.) 15 Doyer street was occupied as a business place exclusively?
A. The two stores; yes.
Q. What was upstairs?
A. First floor Chinese restaurant, Chinese barbers, Chinese mission.
Q. Up above that?
21 A. That is the Morning Star Mission up above there, and Chinese dwellings separated in small apartments.
Q. On the top floor?
A. On the top floor is the housekeeper and various other little compartments.

Francis J. O'Brien, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. McManus:

Q. Mr. O'Brien, you are the witness who was called in the cases of Tom Dock and Hom Pong?
A. Yes, sir.
Q. Do you know this defendant, Lee Kit?

A. Yes, sir.
Q. Did you know him between the years '91 and '95?
A. Yes, sir.
Q. Did you see him during that time?
A. Yes, sir.
Q. Where did you see him?
A. In the store.
22 Q. What store?
A. Kwong Yen Ti & Company.
Q. What number?
A. 15 Doyer street.
Q. In the borough of Manhattan, city of New York?
A. Yes, sir.
Q. What was he doing there?
A. Sometimes selling some of the goods.
Q. You repeat all the statements that you made as to your business, and so on, and as to your business with Chinamen?
A. Yes, sir.
Q. And how many years you were conducting the business?
A. Yes, sir.
Q. 19 years?
A. Yes, sir.
Q. In the borough of Manhattan?
A. Yes, sir.
Q. How often would you go to this place of Kwong Yen Ti & Company?
A. Twice a day.
Q. Regularly?
A. Every day.
Q. Would you bring goods there or take goods from there?
A. Sometimes take goods from there and sometimes take them to there.
Q. Did you ever have any business with this defendant, Lee Kit?
A. Yes, sir.
Q. What was the nature of it?
23 A. Sometimes he paid me for the goods and sometimes he give me goods to deliver.
Q. Did you ever see him selling goods there to people?
A. Yes, sir.
Q. And did he exercise authority about the place?
A. As I thought.
Q. Did he hold himself out as one of the partners in that firm of Kwong Yen Ti & Company?
A. I was told so.
Q. Did he hold himself out as one of them?
(Objected to as to form of question.)
Q. Who told you he was a partner?
A. I think it was the manager of the store.
Q. Which one was the manager?
A. He isn't here.
Q. What is his name, if you remember?
A. I think his name is Hom Lung.

Cross-examination by Mr. IZARD:

Q. When did you first find that you were going to testify in this case, Mr. O'Brien?

A. I told you, about a month ago.

Q. (By the COMMISSIONER.) This case?

A. The whole three cases, about a month ago.

24 Q. (By Mr. IZARD.) How did you happen not to mention Lee Kit as a partner when you gave the names of the partners the other day?

A. You didn't ask me the names of the partners.

(Objected to as misleading.)

Q. Mr. O'Brien, you testified that you had business with this defendant?

A. Yes, sir.

Q. What did you have in the way of business with him, specifically?

A. He paid me money for delivering stuff to the store.

Q. In what year did he pay you—this particular defendant—pay you money?

A. All the years of my dealings with the store.

Q. How many years was that?

A. I was dealing with the store, I guess, five years.

Q. Then you are able to positively remember that during each of these five years he actually paid you your truck bills?

A. Some time during the year.

Q. But certainly during the year you are certain he made at least one payment?

A. Yes, sir.

Q. What other transactions did you have?

A. None that I know of.

Q. You don't recall any other?

A. No.

25 Q. You don't know, of course, what interest he had in this store?

A. No.

Q. You don't know that he had any?

A. I was told so.

Q. I mean of your own knowledge.

A. No; I don't know.

Testimony closed.

Mr. McManus moves to discharge the prisoner on all the grounds stated in the Chu Do and Lew Guey cases, as well as on the evidence.

Counsel for the Government asks for an order of deportation.

Decision reserved.

26 UNITED STATES
vs.
LEE KIT.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 15th, 1902.*

Present: Mr. Howell and Mr. McManus.
Mr. McManus presents argument.
Mr. Howell presents argument in opposition.
Mr. McManus moves for the discharge of the defendant.
Mr. Howell moves to deport.
Decision reserved.

27 UNITED STATES
vs.
LEE KIT.

Before B. Lincoln Benedict, esq., United States commissioner.

BROOKLYN, *December 18th, 1902.*

Appearances: Same as before.
The commissioner hands counsel written opinion and orders deportation of defendant.
Mr. McManus takes exception to ruling and states he will appeal.

28 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

The above-named defendant feeling aggrieved by the order made and entered on the 18th day of December, 1902, in the above-entitled action, by Hon. B. Lincoln Benedict, United States commissioner in and for the said district, by which it was adjudged that the said defendant, Lee Kitt, was not born in the United States and was a Chinese laborer without certificate of residence and without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the United States district court in and for the eastern district of New York, for the reason specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, pro-
29 ceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated New York, December 27th, 1902.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant, 170 Broadway,
Borough of Manhattan, N. Y. City.

The foregoing appeal is allowed.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Notice of appeal. Filed December 29, 1902.

30 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

UNITED STATES OF AMERICA,
Eastern district of New York, ss:

Terence J. McManus, being duly sworn, says that he is one of the attorneys for the defendant in the above-entitled action, and upon information and belief alleges that the said order made by the commissioner herein is erroneous and against the just rights of the defendant for the following reasons:

I. That the complaint herein did not charge a violation of the act of May 5th, 1892, as amended by the act of November 3rd, 1893.

II. That the defendant was not brought before the court in a manner prescribed by section 13 of the act of 1888, in that he was arrested
31 by a Chinese inspector without any warrant for his arrest having been issued.

III. That the commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

IV. Upon the ground that the commissioner at such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper, and incompetent testimony.

V. That the act of May 5th, 1892, as amended by the act of November 3rd, 1902, has been repealed in so far as the same relates to Chinese persons residing in the United States.

VI. That the offense is barred by reason of the operation of section 1046–1047 of the United States Revised Statute'.

VII. That it does not appear that the said B. Lincoln Benedict, esq., such United States commissioner, was designated by the district attorney of the eastern district of New York as the commissioner before whom the said Lee Kit should be taken for a hearing.

32 VIII. For other errors appearing in the record of said trial.

Subscribed and sworn to before me this 29th day of December, 1902.

TERENCE J. MCMANUS.

WM. V. DUTCH,
Notary Public, Richmond Co.

Certificate filed in N. Y. Co.

(Endorsed:) Assignment of error. Filed December 29, 1902.

33 United States district court, eastern district of New York.

UNITED STATES, PLAINTIFF,
vs.
LEE KIT, DEFENDANT.

On this 29 day of December, 1902, it is ordered that the appeal herein be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal, and order allowing the appeal be served upon

the United States district attorney, and that the said service be made on or before the 31st day of December, 1902, and that a copy of the said papers be served upon the said United States commissioner, Hon. B. Lincoln Benedict, and Charles J. Haubert, United States marshal.

And it is further ordered that the plaintiff, through its attorney, George H. Pettit, be and appear at a session of the United States district
34 court in and for the eastern district of New York, appointed to be held at the city of New York, Borough of Brooklyn, on the 15th day of January, 1903, pursuant to a notice of appeal and allowance thereof filed in the clerk's office in the eastern district of New York, wherein the United States of America is plaintiff and Lee Kit is defendant, to show cause, if any, why the judgment and order rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. B. Lincoln Benedict, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order and stay. Filed and entered 29th day of December, 1902.

35 United States district court, eastern district of New York.

UNITED STATES *vs.* LEW GUEY. SAME *vs.* TOM DOCK, ALIAS HOM DOCK, Lee Kit, and Tom Hong, alias Hom Poe. SAME *vs.* AH HOW. SAME *vs.* YUNG LEE. SAME *vs.* YUNG BONG. SAME *vs.* CHU DO, ALIAS CHU GEE.	March 18, 1903.

36 THOMAS, J.

The decision of the commissioner is affirmed in each of the above cases, except that of Yung Bong, as to which it is reversed solely upon the ground that the evidence shows satisfactorily that he was born in the United States.

EDWARD B. THOMAS, *U. S. J.*

37 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the Borough of Brooklyn, city of New York, on the 28th day of March, A. D. 1903.

Present: The Honorable Edward B. Thomas, district judge.

UNITED STATES
vs.
LEE KIT.

The defendant above named, having been arrested upon the 24th day of July, 1902, upon a warrant issued by B. Lincoln Benedict, esquire, United States commissioner, upon a complaint sworn to before him on the 24th day of July, 1902, by J. H. Jenkins, esquire, Chinese inspector, for a violation of the Chinese exclusion acts, and the case against the said defendant, Lee Kit, having come on for hearing before the said United States commissioner, and evidence having been taken therein, and the said United States commissioner having, on the 18th day of Decem-
38 ber, 1902, entered a judgment herein, and having ordered the deportation of the said defendant, and the said defendant having appealed from the said judgment and order of deportation to me, judge of the United States district court for the eastern district of New York, and the said appeal having duly come on to be heard on the 23rd day of January, 1903, and after hearing Abraham Gruber, esquire, of counsel for the defendant, in support of said appeal, and Lloyd M. Howell, esquire, assistant United States attorney for the eastern district of New York, in opposition thereto, and it having been decided by me that the judgment and order of deportation appealed from should be sustained:

Now, upon motion of William J. Youngs, esquire, United States attorney for the eastern district of New York, it is

Ordered, adjudged, and decreed that the said judgment and order of deportation entered herein on the said 18th day of December, 1902, be, and the same hereby are, in all respects affirmed; and it is

Further ordered, adjudged, and decreed that the said Lee Kit be removed to the country from whence he came, to wit, the Empire
39 of China, and that an order of deportation be made accordingly.

EDWARD B. THOMAS, *U. S. J.*

(Endorsed:) Order. Filed and entered the 28th day of March, 1903.

40 United States district court, eastern district of New York.

UNITED STATES
vs.
LEE KIT.

Whereas on the 24th day of July, A. D. 1902, a complaint was made by J. H. Jenkins, esq., Chinese inspector, before B. Lincoln Benedict, esq., United States commissioner, setting forth in substance that one Lee Kit, on the 24th day of July, A. D. 1902, at Brooklyn, in said district, was then and there an alien, that is to say, a person of Chinese descent, who was unlawfully and without right within the United States; whereupon a warrant was issued by said commissioner for the arrest of the said Lee Kit, and he was arrested thereon on the 24th day of July, 1902.

And afterwards, and on the 12th day of August, A. D. 1902, and by continuance to and including the 18th day of December, 1902, a hearing in said cause was had before said commissioner, at which hearing the respondent claimed that he was a merchant at the time the
41 Chinese exclusion acts went into effect, and after a full hearing thereon it was found and adjudged by said commissioner that the said Lee Kit was not such a merchant and was not born in the United States and was without right under the law in the said United States, having come from a foreign country, to wit, the Empire of China.

And it was thereupon ordered and adjudged by said commissioner that the said Lee Kit, as aforesaid, be removed from the United States to the country from whence he came, to wit, the Empire of China.

And thereupon, and after the rendering of the above-recited order and decree by the commissioner, counsel for the respondent appealed from said decision of the commissioner to the judge of the district court of the United States within and for the eastern district of New York, which said appeal was duly allowed by said commissioner.

And afterwards, and on the 23rd day of January, A. D. 1903, said appeal came on for hearing before the Hon. Edward B. Thomas, district judge, and after a full hearing thereof it was ordered that the decision of the commissioner be affirmed.

Therefore it is hereby ordered, adjudged, and decreed that the
42 said Lee Kit be removed from the United States, to wit, the eastern district of New York, to the country from whence he came, to wit, the Empire of China.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States within and for the eastern district of New York, at the borough of Brooklyn, in said district, this 30th day of March, A. D. 1903.

[L. S.] RICHARD P. MORLE, *Clerk.*

(Endorsed:) Order of deportation. Filed and entered the 30th day of March, 1903.

43 District court of the United States, eastern district of New York.

UNITED STATES
against
LEE KIT.

SIR: Please take notice that the defendant above named hereby appeals to the United States Supreme Court from the order made and entered herein on the 28th day of March, 1903, and from each and every part of said order.

Dated New York, April 10th, 1903.

Yours, &c.,

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Defendant and Appellant.

To WILLIAM J. YOUNGS, Esq.,
U. S. District Atty.,
Clerk of U. S. District Court.

(Endorsed:) Notice of appeal. Filed April 11, 1903.

44 United States Supreme Court.

LEE KIT, APPELLANT,
against
UNITED STATES.

To the Justices of the Supreme Court of the United States:

Lee Kit, the appellant herein, hereby applies for allowance of appeal to the Supreme Court of the United States from the judgment, order, and decision of the United States district court for the eastern district of New York, entered herein on the 28th day of March, 1903.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed and it is further

45 Ordered that this appeal shall operate as a supersedeas, to the extent only that the execution of the warrant of deportation is stayed pending the appeal.

Dated Washington, April 17th, 1903.

R. W. PECKHAM,
Associate Justice, United States Supreme Court.

(Endorsed:) Appeal. Filed April 20, 1903.

46 United States Supreme Court.

LEE KIT
against
UNITED STATES

The above-named appellant, on this appeal from the order of the district court of the United States for the eastern district of New York,

confirming the order of deportation by B. Lincoln Benedict, United States commissioner, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular, and erroneous, for each and all of the following reasons:

First. In not holding that during the period running from the year 1891 to the year 1895 the appellant was a Chinese person, other than a laborer, to wit, a merchant engaged in buying and selling merchandise at a fixed place of business, to wit, 15 Doyer street, in the borough of Manhattan, city of New York, which business was conducted
47 under the name of a firm of which he was a member, and in not holding that the appellant was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as such merchant at the premises and during the period aforesaid.

Second. In not holding that said commissioner and court had no jurisdiction over the appellant, for the reason that the complaint under which the proceeding herein was had was not drawn in conformity with the Chinese exclusion acts or any statute of the United States, and in not holding that the said complaint was not sufficient to confer jurisdiction.

Third. In not holding that the appellant had established, by affirmative proof, that the appellant was a Chinese person entitled to be and remain in the United States.

Fourth. In not holding that the act of April 29th, 1902, only reenacts such provisions of the exclusion acts as do not conflict with treaty provisions, and in not holding that a correct and proper construction of the said act of 1902, in conjunction with the treaty
48 between the United States and China promulgated in 1894, required a holding that the provisions of the exclusion act of May 5th, 1892, as amended by the act of November 3rd, 1893, had been repealed in so far as the same related to the exclusion of Chinese persons or laborers residing in the United States.

Fifth. In not holding that the said commissioner and said court had no jurisdiction over appellant in that the exclusion acts and other acts conferring jurisdiction upon the said commissioner and the said court had been repealed (in so far as the same related to Chinese persons and laborers residing in the United States), by the said act of April 29th, 1902, which expressly repealed such laws as were in conflict with treaty obligations, and the exclusion acts being (in so far as they related to Chinese persons and laborers residing in the United States) in conflict with Article IV of the treaty promulgated in 1894 between the United States and China, in that those acts denied to such persons the rights and protection guaranteed by the United States to citizens of the most favored nation.

49 Sixth. In not ordering appellant's discharge from custody.

BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellant, 170 Broadway, New York City.

(Endorsed:) Assignment of error. Filed April 20, 1903.

50 At a stated term of the district court of the United States in and for the eastern district of New York, held at the court rooms

in the borough of Brooklyn, city of New York, on the 27th day of May, 1903.

Present, Hon. Edward B. Thomas, justice.

LEE KIT, APPELLANT,
v.
UNITED STATES, APPELLEE.

A motion having duly come on to be heard for an order directing the clerk of this court to annex and include in the record upon appeal to the United States Supreme Court herein the decision and opinion of B. Lincoln Benedict, esq., United States commissioner.

Now, after hearing Terence J. McManus in support of the said motion and Lloyd M. Howell, esq., United States assistant district attorney, in opposition thereto, it is—

Ordered that the said motion be, and the same hereby is, granted, and the said clerk is hereby directed to annex said decision and opinion rendered by the said B. Lincoln Benedict to the record upon appeal herein.

EDWARD B. THOMAS, *U. S. J.*

51 In the matter of Lee Kit, Tom Hong, and Tom Dock.

Before B. L. Benedict, U. S. commissioner.

In these three cases it is urged on one side that the decision of the circuit court of appeals of this circuit in the case of The United States vs. Pin Kwan requires the commissioner to decide that these three Chinese persons were not merchants within the meaning of the statute in 1894, and that being now laborers without certificate of residence they must be deported. On the other side it is urged that the decision of the court in that case was only that the merchant's certificate that Pin Kwan had was not the certificate required by law and could not be effective to allow his remaining here, and that the discussion of the effect and weight of evidence which the court itself had said it was error to admit (a certificate being the sole proof admissible) goes merely to show what the court thought of the evidence in that case, which differed from the present one.

52 Admitting the distinction, I do not think the United States commissioner is at liberty to disregard carefully expressed language of the circuit court of appeals for the circuit even though a dictum of the court as to the precise question before it. The proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894, but not to show a real interest of each in the business as partners; they do not to my mind clearly establish facts which would bring these persons within the statute as merchants. It follows that an order for deportation for each one must be made.

I certify the foregoing to be a true copy of an original decision made by me in the cases of The United States vs. Lee Kit, The United States vs. Tom Hong, and The United States vs. Tom Dock, upon application for orders of deportation of the said Lee Kit, Tom Hong, and Tom Dock, made on the 18th day of Dec., 1902, and remaining on file in my office.

[L. S.] B. LINCOLN BENEDICT,
U. S. Comm.

53 UNITED STATES OF AMERICA,
Eastern district of New York, ss:

I, Richard P. Morle, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a correct transcript of the record and papers in the case of The United States against Lee Kit, made up to be transmitted to the United States Supreme Court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 27th day of May, 1903.

[SEAL.]

RICHARD P. MORLE, *Clerk,*
By PERCY G. B. GILKES,
Deputy Clerk.

54 UNITED STATES OF AMERICA, ss:

To The United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the district court of the United States for the eastern district of New York, wherein Lee Kit is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand nine hundred and three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

(Indorsement on cover:) File No. 18964, E. New York D. C. U. S. Term No. 313. Lee Kit, appellant, vs. The United States. Filed June 2d, 1903. Received office Supreme Court of U. S. May 28, 1903.

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